The AGM in Europe

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THE AGM IN EUROPE

Closing the Gap between Theory and Practice

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CLOSING THE GAP BETWEEN THEORY AND PRACTICE

PROEFSCHRIFT

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door

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LIST OF ABBREVIATIONS AND LEGISLATION

ACA	Australian Corporation Act
ACGC	Austrian Corporate Governance Code
AFM	Financial Markets Authority (Netherlands)
AGM	Annual General Meeting of Shareholders
AktG	Aktiengesetz (Germany)
AMF	Financial Markets Authority (France)
AoA	Articles of Association
Austrian AktG	Aktiengesetz (Austria)
BGCG	Belgian Corporate Governance Code
BGH	Bundesgerichtshof (Germany)
CA 2006	UK Companies Act 2006
DCC	Dutch Civil Code
DCGC 2008	Dutch Corporate Governance Code 2008
DCGC 2016	Dutch Corporate Governance Code 2016
DGCL	Delaware General Corporation Law
DTR	Disclosure and Transparency Rules (UK)
EC	European Commission
ECLE	European Company Law Experts
EGM	Extraordinary General Meeting
EP	European Parliament
FCC	French Commercial Code
FCC	Financial Markets Authority (UK)
FCGC	French Corporate Governance Code
GCGC	German Corporate Governance Code ('Kodex')
GM	General Meeting
HR	Hoge Raad (Dutch Supreme Court)
ICGC	Irish Corporate Governance Code
Irish CA 1963	Irish Companies Act 1963
Irish CA 2014	Irish Companies Act 2014
Irish CGA	Irish Corporate Governance Annex
RPT	Related-party transaction
UKCGC	UK Corporate Governance Code
Wft	Financial Supervision Act (Netherlands)
WpHG	Wertpapierhandelsgesetz
WvV	Code of Company Law (Belgium)

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INTRODUCTION

There is a large and ongoing debate on whether the Annual General Meeting of shareholders (hereinafter: AGM[1]) is the appropriate corporate body to have decision-making powers in corporate governance[2] (for example, see Bainbridge, 2002, 2012, and Bebchuk, 2005, for opposite points of view). One of the key questions is whether decision-making by the AGM is optimal, or just a matter of legal formality instead. AGMs are often portrayed in the media as joyful day trips for seniors and retirees, who are offered delicious refreshments and drinks and some interesting goodies. For instance, Bremmer (2016) quotes a private shareholder attending the 2016 AGM of Unilever NV: '[f]or me, the main reason to attend AGMs is the nice atmosphere and the snacks. For example, the [Dutch] construction company Koninklijke BAM: they perform badly, but they have nice food and drinks, and organised a trip to the sealock in IJmuiden. The best snacks are catered at Acomo in Rotterdam, you can even get champagne there. I also enjoy the catering at the meetings of Ahold and ING. Walking is more difficult for me lately, but for as long as I am able to do so, I will visit these meetings' (translated by the author). The above state of affairs in (Dutch) AGMs, or 'circuses' per Bremmer (2016), does not correspond to their role as prescribed in corporate law.

Besides the apparent reputation for offering entertainment, the AGM faces other obstacles. Small shareholders in particular consider the costs of participating in the AGM too high and are reluctant to vote according to economic theory. Thus, turnout rates, especially of small shareholders, are generally considered to be quite low. Is advocating for enhanced shareholder participation still expedient? The European Commission (EC) seems to think so, following its proposal to amend the Shareholder Rights Directive (Directive 2007/36/EC[3]). With this proposal, which was adopted in March 2017 in an amended version, the EC is aiming at increasing shareholder participation in AGMs. The proposal also increases the decision-making rights of shareholders at the European level, as it includes, *inter alia,* a shareholder say on pay and large related party transactions.[4]

In short, the goal of this research is investigating the apparent discrepancies between the legal theoretical role (*cf. infra*, section 2 of this introduction) and the practical role of the AGM of listed companies, and whether and how its functioning may be enhanced. For this, we focus on shareholder turnout in particular. In this introduction, we provide an elaborated introduction to

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[1] An EGM (i.e., Extraordinary General Meeting) can also be called. Please refer to chapter 1, section 3 of this study. In this study, we generally use the terms 'AGM' and 'general meeting' to denote the (annual) general meeting of shareholders.

[2] There are many (slightly) different definitions of corporate governance that are used. For example, the Cadbury Code (1992, section 2.5) states that '[corporate] governance is the system by which companies are directed and controlled'. The OECD uses the more specified definition of the European Central Bank in its 'Glossary of Statistical Terms', and states that corporate governance contains the 'procedures and processes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making' (OECD, 2005).

[3] Directive 2007/36/EC of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies, 2007 O.J. L 157/87.

[4] Although we have to add that the European Parliament (EP) has substantially changed this proposal in the summer of 2015 regarding the latter (*cf. infra*, chapter 1 of this research).

the discussion of the role of AGMs and shareholder decision-making, starting with the agency theory. We subsequently outline our research, including our research questions and methods (sections 5-7 of this introduction).

1. THE AGENCY THEORY AND CORPORATE GOVERNANCE

Virtually every study to date in the field of corporate governance refers to the agency theory. This study is no exception in this respect. Agency theory lies at the heart of corporate governance, but relationships between principals and agents exist in many other situations as well: agency theory is directed at any relationship in which one party – the principal – delegates work to another one – the agent. Employment contracts are common examples. Sappington (1991) notes that some tasks are too complicated or too costly to do oneself, and thus the principal needs to hire an agent, who has specialised skills or knowledge to perform the specific task. As Sappington points out, the central question in these kinds of relationships is how the principal can motivate the agent to perform as the principal would prefer, while keeping in mind that monitoring is generally costly. In these agency relationships two problems may occur: i) an agency problem because of conflicting goals of the principal and agent that arises because it is difficult or costly for the principal to monitor whether the agent is acting in the principal's interest, and; ii) a problem that stems from risk sharing when the principal and agent have different risk preferences and hence prefer different actions (Eisenhardt, 1989). Agency theory focuses on the optimal structure of a contract to govern such a relationship and has frequently been used in many fields, often accompanied by economic models to study behaviour (e.g., Ross, 1973; Harris and Raviv, 1979, 1978; Holmstrom, 1979; Gausch and Weiss, 1981; Amihud and Lev, 1981).[5]

There is also an agency relationship between owners and managers in large public corporations. Shareholder decision-making regarding corporate strategy would be largely inefficient due to coordination failures, and hence these powers are usually delegated to a board of directors (also described as the fourth fundamental characteristic of corporations by Hansmann and Kraakman, 2009). Nonetheless, economists have paid no attention to the internal organisation and decision-making of companies for quite a long time. Only in the 1930s did economists consider looking inside the corporate 'black box'. Before this time, standard (micro- and macro)economic theory focused on optimal production and supply; firms determined their supply on the market using the intersection of their marginal costs and marginal benefits for a given price. They used production factors such as capital and labour. How and why firms operated in the market in the first place and how decisions were made was not considered to be important. This thinking changed when economist Ronald Coase developed his theory on transaction costs in his seminal article 'The Nature of the Firm' in 1937. Per Coase (1937), 'economists in building up a theory have often omitted to examine the foundations on what it was erected' (p. 386). It was about time to consider the meaning of the term 'firm', as price theory offered 'a very incomplete picture of our economic

[5] Although this theory is widely recognized, one may note that the strategic delegation theory (industrial organisation) somewhat counters the agency theory. The theoretical model of strategic delegation, which was developed in industrial organisation theory, suggests that the principals (i.e., the shareholders) may actually gain from delegating decision-making to agents (i.e., the directors/managers) *an sich*. The theory predicts that the competitive environment depends on whether delegation is actually beneficial or not. Thus, delegation may be beneficial when it is strategic to delegate decision-making, i.e., strategic delegation. To learn more about the strategic delegation theory, see for example Vickers (1985), Fershtman and Judd (1987), Sklivas (1987), and Christiansen (2013).

system' (Coase, 1937, p. 387). Accordingly, Coase made a distinction between transactions via markets and organisations and argued that transactions take place within an organisation if the transaction costs of the market are too high (i.e., when the price is far from a *sufficient statistic*, also see Williamson, 1981; Demsetz and Lehn, 1985; Shleifer and Vishny, 1986). Per Coase, the question is always whether it will pay to bring an extra exchange transaction under the organising authority. At the margin, the costs of organising within the firm will be equal either to the costs of organising in another firm or to the costs involved in leaving the transaction to be 'organised' by the price mechanism.

This theory of transaction costs was the first theory that dealt with the existence of firms or other organisations and their internal structure. Firms had become more than just a 'black box' in academic literature. In their seminal article Jensen and Meckling (1976) further developed the theory of the firm. According to these authors, a theory that explained how the conflicting objectives of individual actors within a firm were brought into equilibrium did not yet exist. Prior to Jensen and Meckling's research in 1976, a consensus already existed regarding the fact that because of the separation of ownership and control as described by Berle and Means (1932),[6] in public companies the interests of shareholders did not completely overlap with those of directors and managers, and that managers did not always serve shareholder interests. For example, Adam Smith referred to this matter in his famous 'The Wealth of Nations' in het following way:

> 'The directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company' (Smith, 1776, p. 439).

Jensen and Meckling (1976) brought the agency theory in the corporate field to the next level and explained in their research that the principals (i.e., shareholders) and the agent(s) (i.e., the director or board of directors, or in economic literature often referred to as managers) generally will incur positive monitoring and bonding costs. Next, there will be some remaining divergence between the agent's decisions and those decisions which would maximize the welfare of the principal. Jensen and Meckling call this cost to the principal the 'residual loss' (p. 308).

Firms were not alone in being considered black boxes for a long time as ownership structures were not entirely discussed too, especially in civil law countries. Although the world seem to have assumed for a very long time that the model of dispersed ownership of American companies as described by Berle and Means (1932) was the prevalent corporate model,[7] i.e. 'quasi-public'

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[6] In their seminal book, Berle and Means (1932) refer to firms as 'economic empires' that have become 'means whereby the wealth of innumerable individuals has been concentrated into huge aggregates and whereby control over this wealth has been surrendered to a unified direction'. According to the authors 'ownership is so widely scattered that working control can be maintained with but a minority interest. [...] In such a case the greater bulk of ownership is virtually without control.' Berle and Means use the term 'quasi-public' for these widely dispersed ownership structures.

[7] Although scholars often refer to this widely dispersed ownership structure, Berle and Means (1932) already refer in their first chapter, 'Property in Transition', to companies with one or more *de facto* controlling shareholders: 'Such separation may exist in varying degrees. Where the men ultimately responsible for running a corporation own a majority of the voting stock while the remainder is widely diffused, control and part ownership are in their hands. Only for the remaining owners is there separation from control.

companies like the American Telephone and Telegraph Company, nowadays scholars seem to agree that this is not a common model in every country. The fact that ownership patterns in continental Europe and Asian countries are more concentrated than in Anglo-Saxon countries (e.g., Van der Elst, 2008) is considered a stylized fact. About two decades ago, Franks and Mayer (1995) already described two types of ownership structures; the 'outsider system', like Berle and Means' model of dispersed ownership, and the 'insider system', where ownership concentration is remarkably higher (Franks and Mayer, 1995). In addition, also in the studies of La Porta, Lopez-de-Silanes, Shleiffer and Vishny (1997, 1998) and in the study of La Porta, Lopez-de-Silanes and Shleiffer (1999) the authors find that ownership is more concentrated around the world than the Berle and Means model indicates when expanding the Franks and Mayer study to more countries.[8] The studies conclude that the insider system appears to dominate in a large part of the world. Although these two studies suffer from 'serious methodological problems' per Barca and Becht (2001) as their coverage is limited (where Franks and Mayer use many firms in a very small number of countries, the studies of La Porta et al. have a small number of firms in many countries), the differences in ownership structures are nowadays widely recognized and have important implications for corporate governance. One can identify problems of conflicting goals and opportunistic behaviour not only between managers and shareholders, but also in the relationships between small shareholders and controlling blockholders. As Becht and Roëll (1999) put it: 'while in the USA the main agency problems seem to stem from conflicts of interest between managers and dispersed, insufficiently interventionist shareholders, in much of continental Europe there are generally large blockholders present who can and do exercise control over management. Instead, the main potential conflict of interest lies between controlling shareholders and powerless minority shareholders' (p.1052).

The presence of blockholders can add agency costs due to an increased risk of private benefit extraction. Blockholders may have incentives to use their majority stake to maximize their private benefits instead of the total value for all shareholders: for example, these shareholders may have incentives to forego profitable investment opportunities if for these investments additional external funds are required because this would mean a dilution of their controlling stake.[9] Another example of opportunistic behaviour that is often mentioned by scholars is the situation where a large shareholder negotiates a cheap loan with the company, for example with an interest rate below the market rate (also referred to as 'tunneling behaviour'). It is important to note that the smaller the *de facto* controlling stake of the blockholder is, the larger the benefits of opportunistic behaviour at the company's expense. Thus, minority shareholders need to monitor not only the behaviour of the board of directors, but also of blockholders to be able to counter or prevent this possible opportunistic behaviour.

Frequently, however, ownership is so widely scattered that working control can be maintained with but a minority interest. […] In such case the greater bulk of ownership is virtually without control' (p. 4).

[8] La Porta et al. link the concentration of ownership to investor protection and state that larger stakes are necessary in markets with low investor protection to serve as an internal monitoring device; in markets with better investor protection these larger stakes are redundant, since these markets provide for external monitoring devices.

[9] For example, according to Leech (1987): '[e]xisting shareholders may be unable or unwilling to supply this additional capital either because of limitations to their personal wealth or their need to maintain a sufficiently diversified portfolio. Expansion therefore entails new shareholders and a consequent loss of control, in some sense, by the initial controlling group.'

Nevertheless, the conclusion that concentrated ownership equals inefficient opportunistic behaviour is certainly not correct in every case. When the risk of opportunistic behaviour is lower, the presence of blockholders may decrease small shareholders' agency costs since these small shareholders may be able to free-ride on the monitoring efforts of the large shareholders in terms of management action. In this case, the public good problem of shareholder monitoring is (partly) internalized by the blockholder (e.g., Grossman and Hart, 1980).

2. THE AGM'S THEORETICAL ROLE

Corporate law aims at mitigating agency problems in the corporate setting, thereby raising the willingness of investors to invest. First, the supervisory board or the non-executive directors monitor the management board or executive directors on behalf of the shareholders.[10] Second, the external auditor plays a large role in the corporate checks and balances. Third, a large part of direct (collective) shareholder monitoring takes place during the (A)GM.[11] [12] Though often only shareholder voting is taken into consideration, the role of the AGM in corporate law can be divided into three functions.[13] First, AGMs have an *information function* as the board provides its shareholders with (financial) information about the company. Secondly, these shareholder meetings serve as a platform for shareholders to ask questions and to engage in discussions with the board about corporate matters (*forum function*).[14] Thirdly, the AGM serves the legal decision-making of

[10] Or, in continental European countries such as Germany and the Netherlands, a broader scope is usually applied that includes other stakeholders as well, like employees. The corporate board needs to act in the interest of the company (in German: *unternehmensinteresse*). In contrast, section 172(1) the UK CA 2006 stipulates that 'a director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole". But, one may note that the interests of the stakeholders also need to be taken into account, such as section 172(1)(b) the interests of the company's employees; paragraph (1)(c) the need to foster the company's business relationships with suppliers, customers and others, and; (1)(d) the impact of the company's operations on the community and the environment. The UK model is therefore often referred to as the 'enlightened shareholder model' (Siems, 2008, p. 179).

[11] *Cf. supra*, nt. 1. EGMs can also be called. Please refer to section 3 of the first chapter of this research for an explanation.

[12] Also the market for corporate control is often mentioned as a disciplinary device. There is a large literature base on this matter, but one may for example refer to the seminal article of Manne (1965), and also Grossman and Hart (1980) and (1988), and Jensen and Ruback (1983).

[13] Van den Hoek (1998) uses four different categories to define the functions of AGMs: i) accountability; ii) information to the extent that it does not belong in category i); iii) discussion and iv) decision-making. In Dutch: *'i) verantwoording; ii) informatieverstrekking voorzover al niet onder i begrepen; iii) overleg; iv) besluitvorming.'* We follow the approach of the three previously mentioned functions since accountability, the first category of Van den Hoek, can be part of both the information and forum function. Not only are directors accountable when they provide information, but also when they have to answer shareholders' tough *ad hoc* questions. Van den Hoek (1998) refers to article 2:107(2) DCC that holds that (translation), 'the management board and supervisory board shall provide [the AGM] with all requested information, unless a substantial interest of the company opposes to this." As we will see in the next chapter when we discuss the legal framework, and as Van den Hoek already recognizes, the notion 'requested information" also entails the right of shareholders to ask questions. In addition, Van den Hoek duly notes that the company's management is in practice not only accountable to its shareholders, the investors of capital, but also to a wider public. The media puts large focus on AGMs and there are often press representatives present. He calls it a 'public relations event' (p. 7).

[14] The following quote of the Dutch Supreme Court shows the theoretical importance of this forum function: *'dat de betekenis van een bepaling in de statuten van een rechtspersoon, voorschrijvende dat een besluit moet uitgaan van een orgaan van die rechtspersoon, in het geval waarin dat orgaan uit meer personen is samengesteld in het bijzonder hierin*

shareholders regarding decisions that are outside the board's discretion (*decision-making function*). The decision-making function of AGMs is often considered to be the core function of the AGM (Strand, 2012). In effect, the other functions serve the decision-making function: shareholders need to be able to make an informed voting decision, and hence need access to information. Although (regularly) disclosed information is usually very detailed – annual reports usually contain hundreds of pages – companies simply cannot provide all information about every corporate engagement to interested shareholders: there is an incomplete information problem, i.e., complete disclosure is usually far too expensive and, most of all, just not feasible. In addition, shareholders may ask for clarifications of the disclosed information. Hence, these three theoretical functions of AGMs are closely linked (*cf. infra*, chapter 1, section 1).

The theoretical importance of the AGM in corporate governance is widely recognized by scholars. For instance, in many corporate law books, the AGM is considered one of the most important corporate bodies and corporate diagrams often show shareholders at the top of corporate structures. According to De Jong, Mertens and Roosenboom (2005) the AGM is an integral part of the corporate governance model and plays a crucial role in the realization of the powers of shareholders. Easterbrook and Fischel (1991) even state that 'if limited liability is the most distinctive feature of corporate law, voting is second' (p. 63). They explore the relation between the residual claim and the right to vote and conclude that voting rights flow to the holders of the residual claim as they need to be able to influence decisions by voting, which explains the function of voting rights.

3. THE AGM IN PRACTICE

Despite its large theoretical importance, the functioning of the AGM is largely criticized. Whereas some scholars even argue that the board is not a mere agent of shareholders, but serves as the nexus for corporate contracts (Bainbridge, 2002, 2012) and that shareholder voting only undermines the role of the board as a central decision-making body (Bainbridge, 2012), others question the position of the AGM as a means to shareholder primacy. In the next sections, we provide a brief overview of the different (economic) problems that are mentioned in the literature regarding AGMs, including rational apathy and free-rider problems, lack of dialogue and side-stepping behaviour.

3.1. Rational Apathy and Free-Rider Problems

Low attendance rates, especially of small shareholders, usually referred to as 'shareholder absenteeism', are often mentioned as a point of criticism. Economic theory provides several explanations for low shareholder attendance. Shareholders can express their discontentment with the corporate state of affairs by selling their shares and investing elsewhere (often referred to as the 'Wall Street Walk', for example see Admati and Pfleiderer, 2009). This 'exit strategy' is feasible for small shareholders since a small amount of shares is unlikely to have an effect on the price of the stock in a liquid market (e.g., Chakravarty and Hodgkinson, 2001). Whereas widely dispersed

is gelegen, dat het besluit tot stand komt als vrucht van onderling overleg van alle leden van dat orgaan die, na daartoe in de gelegenheid te zijn gesteld, aan dat overleg wensen deel te nemen' (*Wijsmuller*-case, *Hoge Raad* 15 July 1968, *NJ* 1969, 101. Also see Overkleeft, 2013, p. 20). For more information on the shareholder's forum rights, please refer to section 2.1.3 and section four of the first chapter and chapter 6.

ownership contributes to the liquidity of the market, it also causes problems since no individual small shareholder has incentives to engage in direct monitoring (Becht, 1999; Chakravarty and Hodgkinson, 2001). The outcome of the vote will be the same regardless of whether a small individual shareholder participates or not. In other words, the marginal effect of a small shareholder's vote on the outcome will be insignificant. Rational shareholders weigh the marginal costs of voting against the marginal benefits and invest the amount of effort for which these benefits exceed the costs. When the benefits of voting are small (approximately zero), and voting comes at a cost, no individual shareholder would be willing to incur this cost of voting; in this case, their optimal monitoring investment will be zero (Easterbrook and Fischel, 1991). Cahn and Donald (2010) refer to this behaviour as 'rational apathy' (pp. 474-475), stating that shareholders may have to 'sit down after work some evening and read a 150-page proxy statement' (p. 474). These information costs and other costs (for example, see Zetzsche, 2008) are assumed to contribute to low attendance rates of (small) shareholders.

A second related economic problem is the free-rider problem. In (partly) widely dispersed ('oceanic') ownership structures (Leech, 2002), shareholder monitoring can be considered a public good. Public goods are i) non-rival, which means that one player consuming the good does not prevent another player from doing so as well, or does not lower the benefits of consumption for this other player, and; ii) non-excludable, which means it is impossible or extremely expensive to prevent another player from using the good. In other words, a public good enhances the welfare of all. In his seminal work, Samuelson (1954) was the first to describe public goods ('collective consumption goods'): goods 'which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtraction from any other individual's consumption of that good' (pp. 387-389). Due to the non-excludable and non-rival characteristics of shareholder monitoring, i.e. a shareholder cannot prevent other shareholders from benefiting from his monitoring efforts and consuming the benefits from monitoring does not affect the benefits for other shareholders, other shareholders are able to (partly) free-ride on the monitoring efforts of an individual shareholder and therefore, no individual shareholder would be willing to incur the (full) costs of monitoring if these are non-zero. This free-rider problem results in a sub-optimal amount of the public good; the actual monitoring level is lower than the monitoring level that maximizes the collective welfare of all shareholders.

We consider the following simple theoretical example to illustrate this matter. There is a public company that has 100 identical shareholders who hold a 1% stake each (N=100). For a moment, assume there is a complete contract in place between these shareholders and they collectively determine the optimal amount of monitoring so that the sum of their marginal benefits equals the marginal cost (denoted as the aggregate effort E). For example, let's assume that the benefits to shareholder i can be described by:

$$B = 3e_i^2 - 10e_i,$$

and its costs by:

$$C = -2e_i^2 + 50e_i$$

where e_i is the effort of shareholder i. Hence, its marginal benefits (MB) and marginal costs (MC) can be described as:

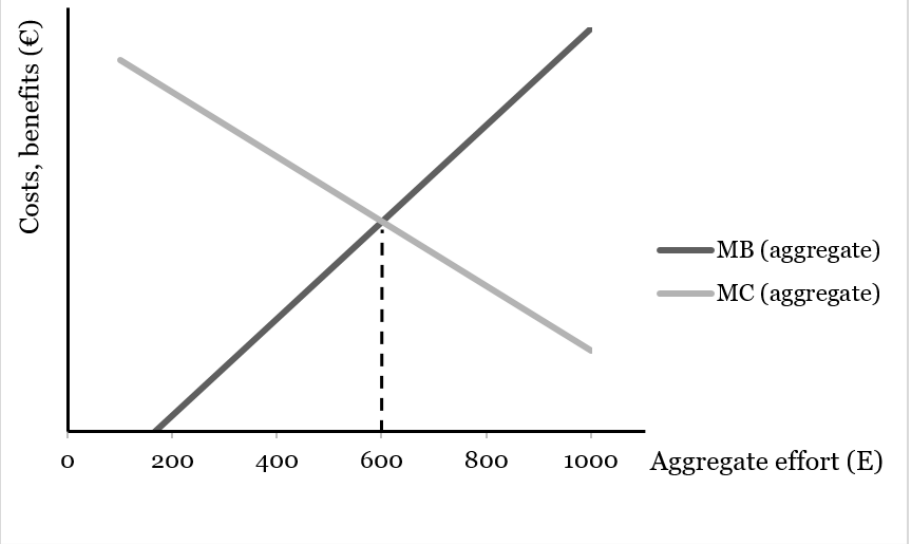
$MB = 6e_i - 10$;

$MC = -4e_i + 50$.

Accordingly, whereas the *MB* are increasing when shareholder *i* spends more effort, *MC* are decreasing. Hence, there are some economies of scale involved in shareholder monitoring. Of course, one would expect that at a certain point, the marginal benefits of spending an extra unit of effort would actually decline, hence, perhaps *MB* is better described as a concave function. Nonetheless, in this simple example, we will just focus on the increasing part of the MB function. Setting *MB* equal to *MC*, one obtains $e_i = 6$. Since every shareholder is identical (see assumption above), aggregate effort $E = e_i * N = 600$. The aggregate effort is shown in figure 1:

FIGURE 1

Shareholder Monitoring



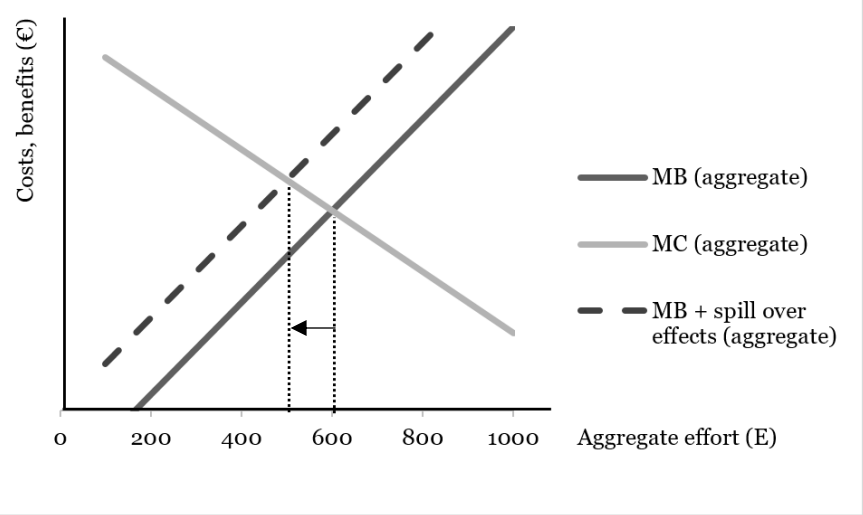
In practice, shareholders will independently determine their own amount of monitoring. The monitoring amount is now determined by the *Nash Equilibrium* of the game between these 100 identical shareholders, where the amount of monitoring of shareholder *i* is the best response to the monitoring efforts of the other 99 shareholders and vice versa.[15] In case the other 99 shareholders would not engage in shareholder monitoring, shareholder *i* would engage in monitoring until his marginal cost of monitoring equalled its marginal benefit, which results in $e_i = 6$. However, if shareholder *i* expects that the other shareholders would invest in monitoring as well, his amount of monitoring would be less than in the previous situation, since he would take into account certain amount of benefits as spill over effects from the monitoring of the other shareholders as well. In other words, the aggregate monitoring efforts of all shareholders will be lower, since each shareholder expects that he will receive some benefits from the monitoring of other shareholders as well. The effort a shareholder expends on monitoring for a given cost of monitoring will therefore be its marginal benefits minus the expected positive spill over effects he receives from

[15] The Nash Equilibrium contains the monitoring amounts of all shareholders in such a way that an individual shareholder is not able to increase its benefits by changing its monitoring efforts.

other shareholders. Assume that shareholder *i* expects to receive spill over effects of other shareholders' monitoring efforts of 10. Setting *MB* plus expected spill over effects equal to *MC* results in $e_i = 5$ and aggregate effort $E = 5 * 100 = 500$. As a result, shareholder monitoring is less than optimal. Each shareholder is free-riding on the public good produced by the other shareholders. This is shown in figure 2:

FIGURE 2

Shareholder Monitoring with Spill-over Effects



Note that in cases where the expected spill over effects of the positive externality are sufficiently high, shareholder monitoring will be (approximately) zero. In our situation, if shareholder *i* assumes to receive 60 or more of the monitoring effort by other shareholders, this shareholder will not engage in any monitoring activity.

3.2. Lack of Dialogue

Another apparent problem is the lack of (meaningful) dialogue between shareholders and board members. According to some scholars, accommodating participation of numerous shareholders within a limited amount of time and to keep discussions and questions meaningful to corporate matters (for instance, Klaassen, 2011; Strand, 2012) is an important issue. Shilling (2001) used results from a study that interviewed over 100 supervisory board members of large German corporations to evaluate the state of affairs in German AGMs. Per Shilling, many board members recognized that German AGMs are ineffective. Many AGMs are 'long, tedious' processes 'where relevant issues are rarely discussed and where the management board is seldom subject to persistent questioning and constructive criticism' (p. 149). Apostolides (2007) used an 'AGM scorecard' to analyse and rank the effectiveness of 22 UK AGMs since 2001. This scorecard includes 12 items[16] and on each item a company scored either 1, 0 or -1. A score of 1 for a particular item indicates that the proceedings concerning this item favour shareholders, whereas -1 indicates that 'directors appear to be prioritizing their own interests'. For example, BP Plc received a -1 on their 2003 AGM agenda, because '[they] started at 11.00 am, [and] placed [the item to accept the year's accounts] as

[16] These items are: 'agenda', 'venue', 'refreshments', 'materials', 'security', 'balance of board', 'address', 'remuneration', 'control', 'voting procedure', 'questions' and 'proxies'.

the last of its 13 resolutions, possibly to deter persistent, awkward or frivolous questioners as the two-and-a-half-hour meeting encroached on everybody's lunch time' (p. 1282). Apostolides assigns a high score to the 2002 AGM of Lastminute.com Plc because the meeting was 'informal and friendly, held at the cosy rather than overwhelming Westminster Theatre, with directors mingling with shareholders before and after the meeting. The meeting was conducted in an open and honest way, with most of the content of the presentation and questions concerning strategy rather than petty detail. Undoubtedly the whole atmosphere was helped by the fact that the attendance was smaller (about fifty shareholders) and more youthful than usual.' (p. 1281). Apostolides (2007) compares the AGM of Lastminute.com Plc with the 2005 AGM of GlaxoSmithKline Plc and describes completely different circumstances: '[s]trict control was exercised, from the airport-style security at the entrance, to the retaining of the microphone at question time, voting by poll rather than show of hands, screens showing only board members not questioners, and so on. All aspects meant that control was retained by the board throughout, without making many concessions to the shareholders' (pp. 1281-1282). Accordingly, Apostolides assigns the meeting of Lastminute.com Plc a score of 11, the highest score, whereas the meeting of GlaxoSmithKline Plc received the lowest score of -7. Although it is probably debatable that the criteria in his analysis are the right ones, Apostolides is one of the very first scholars that actually addresses the state of affairs during AGMs. We will investigate the state of affairs of Dutch AGMs in chapter 6 of this study (*cf. infra*, also see section 5 of this introduction).

3.3. Side-Stepping Behaviour and Other Problems

Side-stepping behaviour of large shareholders may also cause impediments to the functioning of AGMs (Van der Elst, 2011; Tiemstra and De Keijzer, 2008). This behaviour is also claimed to be one of the explanations for low (physical) attendance rates of (small) shareholders (Strand, 2012; Strätling, 2003; Hodges, Macniven and Mellett, 2004). Although the AGM is the place where *all* shareholders, including small private investors, have the opportunity to ask questions and formal decision-making takes place, large shareholders often negotiate on important decisions during private meetings outside AGMs, for example during conferences, roadshows or one-on-ones (Tiemstra and De Keijzer, 2008). These ways of shareholder monitoring may be less costly and more efficient to large shareholders than the static annual gathering in AGMs, making the actual AGM less relevant. Moreover, according to Strätling (2003), institutional investors may prefer to approach the corporate board not at AGMs, but directly at these private meetings 'in order not to tarnish the reputation of the companies they invest in' (p. 76). Thus, small shareholders may perceive the AGM irrelevant, since important discussions and *de facto* decision-making do not take place anymore, making the AGM perhaps just a formality.

In addition, we see that resolutions are often approved with extremely large majorities and seldom dismissed (Van der Elst, 2012a, 2011), which probably is partly caused by the aforementioned side-stepping behaviour of large shareholders and institutional investors. And whereas the use of proxy voting can increase voter turnout rates, it may also hinder the functioning of the AGM as a forum for shareholder dialogue; the same may hold for the use of proxy advisors. In its Green Paper 'The EU Corporate Governance Framework' (2011a)[17] the EC mentions other reasons for low engagement on the part of institutional investors in particular (in terms of active

[17] EC (2011a) Green Paper The EU Corporate Governance Framework, *COM (2011) 164 final.* 5 April 2011.

participation during AGMs), such as portfolio diversification, and conflicts of interests. Winter (2011) even uses the notion 'extreme diversification' in relation to institutional investor portfolio diversification, which indicates the high costs of monitoring all companies extensively.

3.4. 'Dull Rituals'

These problems make the practical functioning of AGMs extremely difficult. Apostolides (2007) states that passing resolutions in accordance with the wishes of directors is often a *fait accompli* due to these problems. Moreover, Aggarwal (2001) argues that:

> '[a]nnual shareholder meetings of publicly held companies are usually very dull affairs. They generally focus on a brief review of corporate financial performance and a speech by the CEO indicating the company's future direction. In most cases, the review of corporate performance glosses over or provides a positive spin on any difficulties or poor performance, and the CEO's speech tends to be bland and self-serving and any discussion of the future is hemmed in by legalistic fears of making specific projections. Oh yes, and the election of the new board of directors is also announced, with most of the votes having already been cast by mail and counted prior to the annual meeting. Most shareholders tend to sell their stock if not satisfied with a company's management or its prospects and corporate elections generally tend to have unsurprising results with most votes cast as recommended by management. The most worrisome part of an annual meeting for the presiding CEO is usually the question and answer period which is mercifully kept very brief. In any case, embarrassing or difficult questions, if any, generally get a brief response accompanied by the suggestion that the questioning shareholder get together with a senior manager for additional details after the formal meeting. Thus, most corporate annual meetings are dull rituals held mostly because they are required by law' (p. 347).

That there are some problems with the performance of its theoretical roles may be clear, but to call AGMs 'dull rituals held mostly because they are required by law' may be perhaps a bit radical. Or is it? Is the AGM indeed obsolete (Strätling, 2003) and the right to vote close to worthless (Zetzsche, 2008)? Or is the AGM just 'the worst form of governance apart from all the others that have been tried out?' (Zetzsche, 2008, p. 17). Although the aforementioned problems probably cause impediments to the practical functioning of AGMs, this does not necessarily mean that AGMs are completely irrelevant. For instance, AGMs make monitoring the corporate board possible for *all* shareholders, a function which cannot be executed by private meetings such as the aforementioned one-on-ones.

Other scholars claim that AGM's powers need to be increased (for instance, see Klaassen, 2007).[18] Bebchuk (2005) also advocates for enhanced shareholder rights. He argues that shareholders should have intervention powers in i) "rules-of-the-game" decisions, e.g. decisions to amend the corporate charter or to change the company's state of incorporation, and ii) other important corporate decisions. The latter category consists of two types of decisions, "game-

[18] For instance, Klaassen argues that decision-making should not be dependent on another corporate body than the AGM in Dutch law: *'[B]esluiten zoals statutenwijziging, ontbinding, omzetting, kapitaalverhoging en –vermindering, fusie en splitsing niet langer in de statuten afhankelijk te stellen van een van een voorstel en/of goedkeuring van een ander orgaan. […] Door de verruiming van de bestuursbevoegdheid moet de algemene vergadering van aandeelhouders eerder 'beschermd' worden tegen het bestuur en andersom. Vanuit het wenselijk geachte machtsevenwicht tussen organen moet daarop niet langer inbreuk kunnen worden gemaakt'* (pp. 291-292).

ending" decisions, e.g. decisions to merge or sell all assets, and "scaling-down" decisions, e.g. decisions to reduce the size by ordering distributions. Bebchuk argues that shareholders should have more power to intervene in specific corporate issues to increase the effectiveness of corporate governance, which in turn enhances shareholder and firm value. In line with Bebchuk's argumentation (2005), Harris and Raviv (2010) show in a theoretical model that, although shareholders should not control *every* corporate decision, shareholder decision-making is optimal in many situations, even in situations where shareholders do not possess relevant information or they have private information.[19]

These conflicting viewpoints raise relevant, yet unanswered, questions. As Strand (2012) puts it, the AGM 'to a large extent remains a black box of unstudied events' (p. 15). And research that addresses these issues remains merely theoretical and descriptive. This research combines legal and economic research to study the actual role of the AGM in the current European corporate governance framework and evaluates whether and to what extent its theoretical role is feasible in practice. Hence, the central object of this research is to assess the current practical relevance of AGMs of listed companies in Europe and thus, in the words of Strand, the unravelling of these black boxes.

4. SHAREHOLDER CONTROL?

In the previous sections we have seen that shareholders have control rights (we discuss the content of these rights in chapter 1), but we have not yet discussed why shareholders have these rights. Below we briefly outline the different viewpoints in the literature on shareholder control rights.

4.1. The Efficiency Argument

Easterbrook and Fischel already noted that shareholders are the residual claimants of the corporation: shareholders are considered to have the same interests (Easterbrook and Fischel, 1983; also see Alchian and Demsetz, 1972, who were the first to mention monitoring by 'residual claimants').[20] And, since shareholders want to maximize the value of this residual claim, they are assumed to have the right incentives to make corporate decisions (Easterbrook and Fischel, 1996). As such they differ from creditors that have a fixed claim and are usually able to negotiate their own terms.[21] Corporate theory suggests that shareholders (generally) aim at maximizing the value of this residual claim, and hence have – at least in theory – the right incentives to be involved in corporate decision-making (Easterbrook and Fischel, 1996). As a result, investor ownership is considered one of the five fundamental characteristics of the modern corporation in Hansmann and Kraakman (2009).[22] The authors describe two key elements in ownership: the right to control

[19] The authors provide the example of dividend distribution, board elections and executive remuneration decisions.

[20] Greenwood (1996) refers to this as 'fictional shareholders', as shareholders are very different in practice. Many other scholars also refer to the differences between shareholders. For example, one may refer to Raaijmakers (2005) and Kemp (2015). Small shareholders may have different incentives compared to large shareholders, and institutional investors may have other incentives than family members. In chapter two, section 5, we discuss the differences in ownership stake, and in section 8, the different types of shareholders.

[21] Although this argument usually does not hold for tort victims, and also smaller creditors have less means to negotiate, for example see Hansmann and Kraakman (1991).

[22] In this respect, one may also refer to the famous article of Milton Friedman in the *New York Times* (1970), with the title 'The Social Responsibility of Business is to Increase its Profits'. The other fundamental

the firm and the right to receive the firm's net earnings. In 'investor-owned firms', ownership, and thus control, is tied to its investors, the shareholders. The authors argue that, although other forms of ownership exist, the dominant role of investor ownership in (large) corporations reflects its efficiency advantages. Although we generally agree with their statement, it is important to note that investor ownership differs substantially between countries and companies. In continental Europe in particular, shareholders often do not have one vote per share. For example, in France shareholders are automatically granted double voting rights to shares registered for more than two years since the Florange law (provided that the use of double voting rights is not prohibited in the articles of association, *cf. infra*, chapter 2, section 5).[23] In the Netherlands companies sometimes use depository receipts (*cf. infra*, chapter 2, section 5.1.2). Furthermore, in some continental European countries ownership is not only tied to capital, but also to labour: for instance, note the German co-determination (*mitbestimmung*) regulations and the binding right of the employees' council in the Netherlands to nominate one-third of the members of the supervisory board.

The Hansmann and Kraakman's viewpoint (and that of Easterbrook and Fischel) merely stems from the contractual theory of corporations. The concept of 'nexus of contracts' was introduced by Jensen and Meckling (1976). The authors state that 'it is important to recognize that most organisations are simply legal fictions which serve as a nexus for a set of contracting relationships among individuals' (p. 310).[24] In contrast, the institutional theory (in Dutch: *institutionele visie* or *institutionele opvatting*) suggests that the corporation is an independent institution instead of a nexus of contracts between shareholders (see Dodd, 1932, 1935).[25] The corporate board, but also other stakeholders like employees, plays a larger role in this theory.[26] However, also in these legal systems, shareholders usually have important control rights.

Also, Schouten (2012) points out that shareholders are not the only corporate actors who can be characterised as residual claimants: other stakeholders, such as employees and creditors may also qualify as residual claimants.[27] For example, employees may benefit from the profits of a company (promotion or higher salaries) in good times, but may risk their jobs and face lower salaries in bad times (Kemp, 2015). In addition, Schouten (2012) argues that shareholder control may not be efficient if this would mean a wealth transfer from other stakeholders to shareholders.

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characteristics are: legal personality, limited liability, transferable shares, and centralized management under a board structure.

[23] *LOI n° 2014-384 du 29 mars 2014 visant à reconquérir l'économie réelle*.

[24] Also see Alchian and Demsetz (1972). Kemp (2015) duly notes that 'contract' is probably not the best term from a legal perspective. He argues that it should be considered 'mutual obligations' (in Dutch: *wederkerige verplichtingen*).

[25] Kemp (2015) describes the discussion between Berle and Dodd in the period 1931-1935, where Berle argued that the powers granted to the corporate board were only for the benefit of all shareholders (Berle, 1931, p. 1049). Dodd (1932) pointed out that the corporation is an institution and that the powers granted to the corporate board must be directed to this institution (p. 1163). Following Kemp (2015, pp. 80-83).

[26] One may also refer to the Dutch *Forum Bank* case, *Hoge Raad* 21 January 1955, *NJ* 1959, 43 (Forumbank), which was often considered to be the turning point in the contractual viewpoint of corporation in the Netherlands. See for example Raaijmakers (2003) for a discussion of the institutional theory and the differences between open and closed corporations (in the Netherlands, the NV and the BV).

[27] The author refers to, *inter alia,* Blair and Stout (1999); Greenfield (2006). See also Stout (2002) and (2012).

4.2. Doctrinal Theory and Shareholder Democracy

Besides this 'efficiency argument', there are also other arguments for the special position shareholders enjoy. Cahn and Donald (2010) mention the rights-based or doctrinal reasoning. According to the authors, in accordance with this theory, which is, for example, prevalent in German jurisdictions, the right to vote can be seen as a 'logically inherent characteristic of membership': i.e., membership 'creates an entitlement to vote, because the right to exercise influence in an association is an essential component of membership'[28] (p. 469). In addition, shareholder powers are also often explained from a political viewpoint. For instance, Dunlavy (2006) explains that the corporation can be seen as a 'body politic'. She states that the vice-president of the English Board of Trade already observed in 1856 that corporations are 'little republics' (p. 1353, retrieved from Hunt, 1936). Dunlavy argues that voting rights can be seen as the 'foundation stone' of corporate governance that is necessary to 'define a baseline of power relations' among individuals (p. 1354). Linked to this political viewpoint is the appellation 'shareholder democracy'. This popular term is advocated not only by politicians but also by many scholars who use this term to show the importance of shareholder voting in AGMs (e.g., Van der Schee, 2011). For example, according to Poulsen, Strand and Thomson (2010) 'for the decision-making process to be representative and democratic, it is important that as many votes as possible are represented' (p. 334). Kemp (2015) writes that the simple majority rule in shareholder voting constitutes a democratic element.[29]

Shareholder democracy is often linked to the one-share-one-vote principle. The principle that all shares of the same nominal value have the same voting rights attached to them (i.e., shareholder equality) is also known as the proportionality principle (McCreevy, 2007). However, Clerc (2009) argues that shareholder democracy should actually be called 'shareholder plutocracy' since control is linked to capital instead of 'one man one vote' (p. 16, also see Bartman, 2009). The comparison between shareholder voting and political democracy and representation is at least remarkable. Heringa (2009) poses the question: '[c]an the notion of democracy, originating from constitutional law, inspire and focus our thinking about (the role and position of) shareholders and their proper influence within the company?' (p. 7). Intuitively, shareholder voting and political democracy may have little in common. For example, shareholders can (relatively) easily exit the company by selling their shares if they do not agree with the course of events in the company; this exit strategy is less present in a constitutional setting. Nonetheless, one may argue that shareholders, like citizens, elect a representative body on a more or less regular basis that makes daily and basic decisions (indirect democracy); shareholders may also vote directly on specific corporate matters (direct democracy). Whether this parallel drawn between shareholder voting and political democracy is accurate on theoretical grounds is at least doubtful. More importantly, the term 'shareholder democracy' is a normative one, which makes the use of it dangerous; can one ever be against democracy? (Clerc, 2009).

4.3. Shareholder Control and Efficiency

One may note that neither the doctrinal theory nor the political theory provides a satisfying answer to the question of why shareholders have control rights. It should be clear that shareholder voting

[28] Cahn and Donald refer to Brändel (1992, section 12) in *Großkommentar zum Aktiengesetz*.
[29] Kemp (2015) also refers to the Dutch *Wijsmuller-case*, Hoge Raad 15 July 1968, *NJ* 1969, 101, *cf. supra,* nt. 14.

in and of itself is not an end, but a means to maximizing the size of the economic pie. Bebchuk (2005) duly writes: '[s]ome supporters of greater shareholder power might regard increases in 'shareholder voice' and 'corporate democracy' as intrinsically desirable. I should therefore stress at the outset that I do not view increasing shareholder power as an end in and of itself. Rather, effective corporate governance, which enhances shareholder and firm value, is the objective underlying my analysis. From this perspective, increased shareholder power would be desirable only if it would operate to improve corporate performance and value' (p.842). The real question therefore is whether it is efficient for shareholders to have control rights, i.e., the efficiency theory. But is shareholder control efficient, given that shareholders with (exactly) the same interests are only 'fictional shareholders' (Greenwood, 1996)?

As we have seen, the link between ownership and the effectiveness of its control has, for example, been studied by Bebchuk (2005) who makes claim for increasing shareholder power. This connection has also been explored by Mallin and Melis (2006), Yermack (2010) and the recent work of Iliev, Lins, Miller and Roth (2015). Schouten (2012, pp. 100-116) distinguishes among 'four mechanisms of voting efficiency': informed voting, which implies that shareholders have information on which their vote is based; rational voting that holds that the information on which the decision is based is processed rationally; independent voting, wherein shareholders base their decision on their own cognitive skills; and sincere voting, which implies that shareholders aim to maximize shareholder value (and not their private interest). The author argues that none of these mechanisms will operate perfectly in practice – for instance, people, including shareholders, are boundedly rational – and that trade-offs may exist. For example, he states that if all shareholders vote independently, experts opinions may not be considered, which could adversely affect informed voting. Thus, efficient shareholder control is not an easy goal to establish.

What would be the alternative to shareholder control? In the past researchers explored labour (co-)control ('labour-oriented model' in Hansmann and Kraakman, 2000), but also the control of other stakeholders (for instance, Tirole, 2001) such as bondholders (for instance, one may refer to the recent article 'Bank bondholders need rights like shareholders' by Jenkins, 2016).[30] [31] Despite the apparent shortcomings of shareholder control, Hansmann and Kraakman draw attention to the fact that the other models of control have even more weaknesses and are generally inefficient, which has led to a convergence on the 'shareholder-oriented model', according to the authors: '[t]he triumph of the shareholder-oriented model of the corporation over its principal competitors is now assured, even if it was problematic as recently as twenty-five years ago' (p.33).[32] If shareholder control is indeed efficient, the subsequent question is whether the AGM is the

[30] A much older example is an article in the *Chicago Law Review* by John Evarts Tracy from 1935 that already explored the case for granting voting rights to corporate bondholders. The author evaluates a proposal to grant creditors controlling voting rights at corporate elections in the event of a default, in order to enhance the protection of these creditors. The proposal entails the following: 'The proposal is that a corporation which is about to put out an issue of fixed obligations, whether they be mortgage bonds or unsecured debentures, be required to grant to the holders of such securities, in the event of a default, the right to vote at corporate elections and to have the controlling vote, so that they will then have the complete management of the corporation, with the right to operate the business and to apply the income therefrom to the payment of the amounts due on such obligations until all defaults shall have been made good, whereupon the right of security holders to vote will cease and the voting control will revert to the shareholders' (p. 211).

[31] See also Stout (2002) and (2012).

[32] The Hansmann and Kraakman article has been influential, but also has been largely criticized. For example, one may refer to a recent article of Welsh, Spender, Fannon and Hall (2014).

appropriate organ to exercise these control rights. For instance, are shareholders in large listed companies willing to take part in corporate decision-making in AGMs, or are they merely passive investors?

In contrast to the link between shareholder voting and efficiency, the role or position of the AGM is usually neither addressed nor challenged, which is exactly the focus of this research. This thesis starts from the premise that shareholder control is indeed generally efficient – or, at least the lesser evil of all options – and focuses on the AGM as a platform for exercising shareholder control rights. In particular, the research contains an extensive analysis of shareholder needs and requirements to participate in AGMs. We evaluate the legal framework of shareholder voting in Europe in the first chapter. Then we evaluate its practical position in several (empirical) analyses. The next section provides a more detailed outline of this research.

5. RESEARCH QUESTIONS AND OUTLINE

The research focuses on the AGM of listed companies in Europe. In these companies there (potentially) is the largest gap between shareholders and the company's management, and the needed data are publicly available (but not extensively researched). Hence, the core question that will be answered in this research is:

> To what extent does the AGM of listed companies in Europe fulfil its important theoretical role as presumed in the currently practiced European legal framework, and how and to what extent can this role be enhanced or should it be repositioned?

In the words of Strand, our aim is unravelling 'the black boxes'. To answer this broad research question, we evaluate the characteristics of AGMs in Europe in practice. This research also hopes to show that simple economic research methods can be adopted in legal research. For example, in chapter 2 and 3 we show that data collection and analyses do not involve complex mathematical skills, but merely require extensive knowledge of the (sometimes subtle) differences within the legal systems.

CHAPTER 1

As a preliminary step, chapter 1 provides an in-depth comparative legal analysis of the current framework of AGMs in listed companies in Europe. Studies in the field of economics usually explore causal relationships, but as soon as the law gets involved, their research often lacks profound legal foundation (for example regarding the coding of variables).[33] We first investigate

[33] For example, the methodology of studies in law and finance is sometimes criticized. For instance, Cahn and Donald (2010) state that: '[o]ne must be careful, however, in formulating conclusions on the basis of presumed effects of company law rules in jurisdictions whose legal system one does not fully understand. A failure clearly to understand the nature and function of sometimes quickly changing and often functionally interrelated company law rules can lead to distorted results. […] For an example of what we mean, take a look at the otherwise insightful paper by Professors Bruce Seifert and Halit Gonenc, which bases itself on previously performed ratings of German corporate governance by other financial economists. Seifert and Gonenc draw conclusions on differences between US and German capital structure relying in part on a 2006 paper rating German and US securities law, a study that apparently failed to take EU law (which dominates the securities law area in Europe) into account. For example, with respect to the disclosure of information in prospectuses in connection with the offering of securities – which in the European Union is

the procedural rights, information rights, discussion and question rights and decision-making rights of shareholders in Europe that are related to AGMs. The following question will be answered:

> What corporate (decision-making) rights do shareholders have in listed companies in the European Member States and how do these rights compare?

CHAPTER 2

In chapter 2, we take a closer look at voter turnout and the behaviour of (small) shareholders during AGMs in Europe to see whether and to what extent shareholders make use of their powers in practice. We establish a dataset and provide a descriptive analysis of the AGM in Europe. We answer the following question:

> What are the main characteristics of AGMs in the European Member States in practice?

CHAPTER 3

In this chapter we use the dataset that is established in chapter 2 for multivariate analyses regarding (small) shareholder voting behaviour. We investigate which factors contribute to (small) shareholder participation in AGMs of listed companies in Europe. As we have seen, shareholder absenteeism is considered one of the main problems related to the AGM. Low attendance rates not only undermine the theoretical monitoring function of the AGM, but can also provide large shareholders with a minority stake with a *de facto* majority stake. Especially in continental Europe, where it is often considered that ownership is more concentrated, this can be a huge problem. Accordingly, we answer the question:

> Which factors contribute to (small) shareholder attendance?

CHAPTER 4

In this chapter we focus on the costs side of the voting decision, and evaluate the impact of the Shareholder Rights Directive (2007/36/EC) in an empirical difference-in-differences framework. We investigate whether the Shareholder Rights Directive increased the voter turnout in the Netherlands, France and Belgium, following Aldrich's theory (1993) in political elections, who argued that turnout is a 'low-cost low-benefit action' (p.261). Accordingly, we evaluate the question:

> Did the introduction of the Shareholder Rights Directive, which aimed at lowering the cost of voting, positively affect (small) shareholder turnout rates in the Netherlands, Belgium and France?

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minutely governed by a framework directive and very detailed regulation – the authors of the study rated the UK disclosure rules at 0.83/1 and the Austrian rules at 0.25/1, although the two countries apply the same EU regulation on prospectuses and have implemented the same EU directive on disclosure' (pp. 194-195). The authors refer to Seifert and Gonenc (2008) and La Porta, Lopez-de-Silanes and Shleifer (2006). See also Siems (2007) on the legal origins theory that is used in the law and finance literature base.

CHAPTER 5

In this chapter we take a closer look at small shareholder decision-making in concentrated ownership structures. We evaluate the (practical) relevance of the AGM to small shareholders in this chapter. As we have seen, shareholder monitoring is considered a public good that suffers from free-rider problems. Small shareholders may be willing to challenge large blockholders that try to extract private benefits. However, due to the public good problem, coordination may be difficult. More specifically, the payoff function of a small shareholder depends on how many other shareholders are expected to take a certain action as well. These games are called 'coordination games'. The general (and often indicated as the only) solution to free-rider problems in the production of a public good is to exclude the players that do not contribute from enjoying its benefits or punish them. In this chapter, we evaluate whether the only solution to the shareholder coordination game is the exclusion or punishment of inactive shareholders or that other (less rigorous) regulatory tools may increase small shareholder voting as well. New corporate governance tools such as the UK rule E.2.2[34] and the Australian two-strikes rule[35] are also considered in this chapter. We have the following question:

> How do small shareholders determine their decision to attend AGMs in concentrated ownership structures and how can small shareholder coordination problems be solved?

CHAPTER 6

Besides the supposed lack of interest on the part of small shareholders, criticism also includes the lack of dialogue and fruitful discussion between shareholders and board members. Thus, in the sixth chapter the AGM minutes of Dutch listed companies are analysed to address the forum function. In the first sections of this chapter we conduct a descriptive analysis to investigate how the forum rights are used. Afterwards we evaluate which factors may contribute to the use of these rights. The central question in this chapter is:

> How and to what extent does the AGM serve as a platform for questions and discussions between shareholders and board members?

CHAPTER 7

The final chapter of this project brings together the findings of the previous chapters in a conclusion and provides policy recommendations on how to, if needed, increase the relevance of the AGM in the European corporate governance framework, based on the outcomes of the analyses in the previous chapters.

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[34] This provision holds that '[w]hen, in the opinion of the board, a significant proportion of votes have been cast against a resolution at any general meeting, the company should explain when announcing the results of voting what actions it intends to take to understand the reasons behind the vote result."

[35] This rule was introduced in Australia in 2011. When the remuneration report receives 25% or more opposition for two years in a row, shareholders vote during the second AGM on whether all directors need to stand for re-election. If this resolution passes with a simple majority, a new meeting is held within 90 days. See Monem and Ng (2013).

6. RESEARCH METHODS AND SAMPLE

Our research methods include classical comparative legal research, empirical analyses and simple economic modelling. The project uses a wide range of different sources; besides legal rules, case law, soft law – such as corporate governance codes and policy documents for extensive classical comparative legal research – this project will use hand-collected data from AGM voting results documents, minutes, annual reports, ownership disclosure documents and others that are disclosed by companies that are part of the main listings of seven European countries (Austria, Belgium, France, Germany, Ireland, the Netherlands and the UK) over a recent period of five years (2010-2014) for chapters 2-3 (and partly for chapter 4).[36] The total sample that we use in these chapters consists of 251 companies, which resulted in 1,255 AGM observations. We also use databases like Thomson Reuters for financial information. In chapter 5 we use a simple analytical model that provides insights on small shareholder voting behaviour in concentrated ownership structures. And, for the sixth sub-question the minutes of 556 AGMs of a sample of 78 Dutch listed companies over an unbalanced panel data sample period of 12 years are examined.[37]

The research generally focuses on seven European Member States: Austria, Belgium, France, Germany, Ireland, the Netherlands and the UK. These countries form a balanced sample that reflects the differences in corporate law approaches, but also in, for instance, ownership concentration rates. Whereas the legal systems of the UK and Ireland originate from the English common law system according to the legal origins theory, the legal system of many countries in continental Europe is often described as a civil law system. Moreover, some scholars (i.e., La Porta, Lopez-de-Silanes, Shleiffer and Vishny, 1998) make a distinction between the German civil law system (for example the legal system in Germany, the Netherlands and Austria) and the French civil law system (for example the one in France and Belgium). Although the question of whether the legal origins theory adequately describes practice (to date) is still widely debated, the sample used in this research is nonetheless to some extent balanced according to this theory.[38] Other, more practical reasons for the selection of the aforementioned seven countries include the availability of the necessary information for the empirical analyses, including for example voting result statements, and the language of these documents.

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[36] Directive 2007/36/EC requires companies to disclose information such as the number of voting rights prior to the AGM (article 5) and the voting results (article 14) and to publish this information online. Ownership structure information is available pursuant to articles 9 and 10 of Transparency Directive 2004/109/EC (Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, 2004 O.J. L 390/38). The sample composition is based on practical and theoretical considerations. Notwithstanding the large criticism of the legal origins theory, it is well-balanced including a large variety of companies of English, German and French legal origin. Practical reasons include the availability of voting information on the websites of the companies (see 'Opt-out' possibility for Member States, article 14(1) second line).

[37] Not all companies have their minutes available for the full sample period. Our sample requirements are discussed in chapter six.

[38] Although there is no central corporate law in the European Union, the corporate laws of the Member States are partly harmonized by European law. Moreover, scholars have predicted that corporate governance models would converge to one dominant model. See for example Hansmann and Kraakman (2000). However, there are still some major differences in corporate law across Europe. For example, in Germany corporate law follows the practice of co-determination or *mitbestimmung*, which enables employees to elect part of the supervisory board members. In this regard, one can also refer to the research of Bebchuk and Roe (1999). These authors developed a theory of the path dependence of corporate structure.

CHAPTER 1 - THE LEGAL CHARACTERISTICS OF AGMS OF LISTED COMPANIES IN EUROPE

ABSTRACT

In this chapter we explore the legal framework of AGMs of listed companies in Europe, which forms the foundation for the empirical analyses in the subsequent chapters. We consider the decision-making rights, information rights (including forum rights) and procedural rights of shareholders at the European level and in the national laws of seven Member States (Austria, Belgium, France, Germany, Ireland, the Netherlands and the UK). We find that, since only a small part of the legal framework of AGMs is harmonized at the European level, there are numerous differences in shareholder rights among national laws. To be able to conduct empirical research in the remaining chapters, we develop a categorization framework of fifteen voting item categories.

1. INTRODUCTION

As we have seen in the introduction of this research, shareholders can exercise their control rights in the (A)GM. AGMs have three theoretical functions: i) the information function, ii) the forum function, and iii) the decision-making function. Shareholder decision-making rights are directly connected to the AGM's decision-making function. These formal rights are arguably collective shareholder rights, as the (special or qualified) majority of the shareholders – sometimes subject to a quorum – determines whether a proposal is adopted. Moreover, only the AGM as a corporate body has these decision-making rights, not individual shareholders. Closely linked to the decision-making function are the forum and the information function: for a shareholder to make a(n) (informed) decision, access to information is key. Shareholder information rights in listed companies include regular disclosure (routine), *ad hoc* disclosure on significant events, and information requests (Cahn and Donald, 2010).[39] Disclosure requirements for listed companies are generally stipulated in financial securities law, which is largely harmonised at the European level.[40] This study focuses on the disclosure of information in – and related to – AGMs. AGMs serve as platforms for shareholders to ask questions (i.e., request information) and to engage in discussions with the board about corporate matters. These forum rights, which usually include the right to ask

[39] In addition to these disclosure requirements, one may also distinguish 'initial disclosure' requirements in an IPO (prospectus Directive, 2003/71/EC and prospectus regulation 809/2004/EC).

[40] The FSAP introduced, *inter alia*, uniform disclosure requirements for listed companies in Europe. This resulted in the Market Abuse Directive (Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation (market abuse), 2003 O.J. L 96/16), Prospectus Directive (Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, 2003 O.J. L 345/64), Prospectus Regulation (Commission Regulation 809/2004/EC implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, 2004, O.J. L 149/1), and the Transparency Directive (Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, 2004 O.J. L 390/38, *cf. infra*, section 2.3 of this chapter). See also the introduction of the IFRS (International Financial Reporting Standards), laid down in the International Accounting Standards Regulation (IAS Regulation). The financial accounts need to be prepared in accordance with these standards. Directive 78/660/EC (Directive 78/660/EC based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, 1978 O.J. L 222), and Directive 83/349/EC (Directive 83/349/EC based on the Article 54 (3) (g) of the Treaty on consolidated accounts, 1983 O.J. L 193) also contain rules on the (consolidated) accounts.

questions and the right to speak at AGMs, can be considered special information rights that may be exercised at AGMs, and hence, these rights are part of information rights in this research. These special information rights are usually considered individual shareholder rights that can be exercised by every shareholder at the AGM (although usually subject to some constraints as we will see in section 4 of this chapter). [41] [42]

Besides these two categories of rights linked to the three theoretical roles of the AGM (i.e., decision-making rights and information rights, including forum rights as special information rights), we also consider provisions that determine 'procedural rights', i.e., provisions that lower the costs of attending AGMs for shareholders as well as provisions that organise the proper functioning of the meeting. The latter category does not contain any rights *per se,* but contributes to the ability to exercise shareholder rights.

1.1. Outline of this Chapter

In this first chapter of this study, we identify the legal position of AGMs within the current corporate governance framework of the seven European countries that we investigate in the subsequent chapters of this research: Austria, Belgium, France, Germany, Ireland, the Netherlands and the UK. This chapter aims to construct the legal outline for analyses in the subsequent chapters of this research, thereby showing the similarities and differences in shareholder rights in these seven Member States. We focus our research on the three functions of AGMs and the shareholder rights connected to these functions. Since the seven countries are all part of the European Union and some aspects of shareholder meetings are harmonized at the European level, we first provide an overview of shareholder rights that can be exercised during the AGM which are determined at the European level. This section also discusses the European Commission's (hereinafter: EC) proposal to amend the Shareholder Rights Directive (Directive 2007/36/EC), which was adopted in an amended version in March 2017. Next, we take a closer look at the national laws that stipulate the shareholder rights: we first consider the procedural rights (section 3), and (special) information rights (including the right to request information) that are exercised during AGMs (section 4). Afterwards we discuss shareholder decision-making rights (section 5). Section 6 provides concluding remarks.

2. THE EUROPEAN FRAMEWORK OF SHAREHOLDER RIGHTS

The EC has made several rather unsuccessful attempts to (fully) harmonize corporate law in Europe. The differences among Member States, especially between Germany and the UK, are simply too great.[43] Hopt (2015), as a member of the European Company Law Experts (hereinafter:

[41] In practice this right is often also exercised outside the AGM by individual shareholders in one-on-ones, or by a small group of shareholders in roadshows. Often, shareholders send in their questions by email before the AGM, and answers to these questions are also sometimes provided by email (for example, following the minutes of Dutch AGMs, used in chapter 6 of this research).

[42] However, one may note that the right to ask questions is also provided to proxy holders.

[43] The discrepancies clearly emerged during the failed harmonization effort of the Fifth Directive (EC (1972) The Fifth Directive. *COM (72) 887 final.* 27 September 1972). With this directive, the EC tried to harmonize the internal affairs of all public corporations. The draft was withdrawn on January 9, 2004, due to disagreement on two controversial articles that followed the German system. First of all, the proposal required companies to have a two-tier board structure that consists of a management board and a supervisory board. The supervisory board appoints the members of the management board. Article 4 of the

ECLE),[44] states that the ECLE have argued that harmonization was only needed in some core areas of corporate law, contrary to capital markets law. Hopt (2015) provides two 'significant reasons' (p. 25) for this: i) the freedom of choice of companies and their shareholders and; ii) substantial differences across Member States in shareholding structure and employee protection. Although governance practices show large convergence, for example in board structures (for instance, Hansmann and Kraakman, 2001[45]), the German corporate law system still requires far-reaching labour involvement with its co-determination rules (following the *Mitbestimmungsgesetz*), whereas this would be unthinkable for the UK (see also in this respect, *cf. supra*, nt. 38, the theory of path dependency).

Although extensive European harmonization efforts failed in corporate law, some issues in this field are partly harmonized by various European Company Law directives. These directives mainly focus on public companies, but some Member States adopted certain rules for private companies as well.[46] The goal of establishing a single market for financial services (i.e., financial markets law[47]) has largely contributed to the creation of several universal shareholder rights in the European Union (Xiangxing Hong, 2009). Directives such as the Shareholder Rights Directive (2007/36/EC) and the Second Company Law Directive (also called the Capital Directive, Directive 2012/30/EU[48]) have introduced some common shareholder (decision-making) rights in Europe.

In this section, we provide an overview of the current European framework of corporate law with respect to AGMs. It is important to keep in mind that whereas the Shareholder Rights

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draft of the Fifth Directive also required mandatory labour participation at the supervisory board level: companies which employed five hundred employees or more were required to have at least one third of the members of the supervisory organ appointed by employees or employee representatives. These highly controversial requirements led to strong opposition in Member States such as the UK, highlighting the significant differences between the German and the Anglo-Saxon system (following Van der Schee, 2011, p. 141). Note that in the German two-tier board system, the supervisory board appoints the management board. In 2012, the European Parliament (EP) stated regarding the 'future of European company law' that she '[b]elieves that due consideration should be given to the resumption of work on the Fifth Company Law Directive [by the EC] with regard to the structure and operation of public limited companies' (EP (2012) European Parliament resolution of 14 June 2012 on the future of European company law. *2012/2669*(*RSP*)).

44 For more information on this group of experts, please refer to (<https://europeancompanylawexperts.wordpress.com/>). Accessed in December, 2016.

45 Hansmann and Kraakman (2001) argue that '[m]andatory two-tier board structures seem a thing of the past; the weaker and less responsive boards that they promote are justified principally as a complement to worker codetermination, and thus share indeed, constitute one of the weaknesses of the latter institution' (p. 19). However, according to the authors, one-tier board systems will increase the role of independent or outside directors, which is a typical aspect of a two-tier board structure. We indeed experience some convergence towards one-tier board structures. For example, the Netherlands recently adopted the one-tier board structure (1 January 2013).

46 For example, the voluntary adoption of capital minimum requirements for private companies by Germany and the Netherlands. Dutch private companies ('BV") were required to have a minimum capital of EUR 18,000. This rule was recently abolished by the implementation of the Dutch Flex BV (in 2013). In Germany, GmbHs require a minimum capital of EUR 25,000. Also the German legislature introduced a new legal form, the UG, which has less strict capital requirements.

47 In contrast to company law, financial markets law is largely harmonized at the European level.

48 Directive 2012/30/EU of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, 2012 O.J. L 315/74.

Directive, the Transparency Directive (Directive 2004/109/EC,[49] amended by Directive 2013/50/EU[50]) and the Takeover Directive (Directive 2004/25/EC[51]) are applicable to listed companies, the Capital Directive, Third Company Law Directive (Directive 2011/35/EC[52]) and article 37 of the Audit Directive (Directive 2006/43/EC[53], revised by Directive 2014/56/EU[54]) are also applicable to public non-listed companies. These directives contain minimum harmonization requirements, which means that Member States may exceed the terms of the provisions in the directives.

2.1. The Shareholder Rights Directive

Europe has been focusing on improving shareholder rights in the past decade. One of the key policy objectives of the EU action plan to modernize company law and enhance corporate governance in 2003 was – as a response to the High Level Group of Company Law Experts report – the strengthening of shareholder rights (EC, 2003).[55] With this plan the EC intended to 'establish a real shareholder democracy' (p.14) in Europe. In its Communication, the EC (2003) announced the implementation is an 'integrated legal framework to facilitate efficient shareholder communication and decision-making (participation in meetings, exercise of voting rights, cross-border voting)' (p.24), which we now know as the Shareholder Rights Directive.

Procedural impediments to shareholder participation in AGMs were widely recognized during the Impact Assessment of the Shareholder Rights Directive in 2006 (EC, 2006b)[56]. For example, the EC recognized that access to notice material relevant to the (A)GM on the internet would lower shareholders' information costs for voting, probably leading to higher shareholder participation. Share blocking, e.g. the obligation to deposit shares a few days prior to the AGM in order to be

[49] Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, 2004 O.J. L 390/38.

[50] Directive 2013/50/EU of the European Parliament and of the Council amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC, 2013 O.J. L 294/13.

[51] Directive 2004/25/EC of the European Parliament and of the Council on takeover bids, 2004 O.J. L 142/12.

[52] Directive 2011/35/EC of the European Parliament and of the Council concerning mergers of public limited liability companies, 2011 O.J. L 110/1.

[53] Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/ 660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, 2006 O.J. L 157/87.

[54] Directive 2014/56/EU of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, 2014 O.J. L 158/196.

[55] EC (2003) Communication from the Commission to the Council and the European Parliament: Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward, *COM (2003) 284 final*. 21 May 2003.

[56] EC (2006b) Impact Assessment. Annex to the Proposal for a Directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC, *SEC (2006) 181*. 17 February 2006.

able to vote, also limited shareholder engagement. And with respect to foreign shareholders, the EC argued that 'the complexity of cross-border voting mechanisms across the EU not only discourages institutional shareholders from voting […], but it also translates directly into higher voting costs (compared to domestic voting) charged by intermediaries to shareholders in case they vote' (EC, 2006b, p.13). The EC (2006b) Impact Assessment proposed new provisions to reduce the costs of shareholder voting, including 1) the introduction of minimum standards regarding proxy voting, thereby removing all existing restrictions in national laws; 2) the prohibition of share blocking and to replace it by a record date; and 3) minimum standards regarding disclosure of information related to GMs. After this Impact Assessment and two rounds of public consultation the Shareholder Rights Directive was formally adopted on 11 July, 2007. Most of the provisions in the Shareholder Rights Directive are procedural ones in accordance with the assessment's findings. It also introduced the right to place voting items on the agenda, to call a general meeting, and the right to ask questions. Below we first briefly discuss the main procedural rights and then we move on to these more material rights.

2.1.1. Procedural Rights

Article 5 of the Shareholder Rights Directive requires Member States to ensure that the convocation of the general meeting is issued at least 21 days before the meeting. Member States may provide the possibility of a reduction to 14 days in the case of a general meeting (which is not an AGM), where the company makes voting by electronic means accessible to all shareholders. Such a resolution needs a qualified majority of at least two thirds of the votes. This authority only holds until the next annual general meeting at the latest. Pursuant to article 5(4) of the Shareholder Rights Directive, Member States need to ensure that the convocation of the general meeting, the total number of shares and voting rights at the date of the convocation, the documents to be submitted to the general meeting, a draft resolution and the forms to be used to vote by proxy and correspondence be published on the company's website for a continuous period that starts at least 21 days before the general meeting. Article 5(3) stipulates the minimum content of the convocation of the meeting.

The obligation to deposit shares for a few days before the general meeting to be able to vote (share blocking) is banned under article 7(1)(a). Accordingly, the second paragraph of article 7 introduces a record date of maximum 30 days.[57]

Article 8(1) of the Directive stipulates that Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation: (a) real-time transmission of the general meeting; (b) real-time two-way communication enabling shareholders to address the general meeting from a remote location; (c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting. Paragraph 2

[57] A record date is a cut-off date for shareholders to register for the general meeting. The share-blocking ban may have lowered the costs of voting substantially in several Member States (*cf. infra*, chapter four of this research). Record dates may also create other problems, however. In particular, they make empty voting possible ('record date capture'). See, for example, Ringe (2012). Ringe explains that the period between the record date and the date of the general meeting makes it possible for general meeting voters not to be shareholders (p. 18). However, as we will see in chapter five of this study, empty voting may also reduce shareholder coordination problems. We do not further address this record date capture problem in our research.

of article 8 adds that electronic participation may only be made subject to requirements when those are necessary to ensure the identification of shareholders and the security of electronic participation. This paragraph also adds that these requirements need to be proportionate to their purposes.

Article 10 and 11 of the Directive provide shareholders with the right to appoint a proxy holder to attend the AGM (or other general meeting), also by electronic means. This proxy holder, who votes in the shareholder's name, can be a natural person or a legal person. This person may not only vote, but also enjoys the same rights as the shareholder such as the right to ask questions (discussed below) and engage in discussions.

Article 14 of the Shareholder Rights Directive mandates the disclosure of voting results. The company is required to establish for each resolution the number of shares for which votes have been validly cast, the proportion of the share capital represented by those voters, the total number of votes validly cast and the number of votes cast in favour, against and abstentions. The voting results must be published no later than 15 days after the general meeting on the company website, but Member States may also set a shorter period. However, the second line of the first paragraph of article 14 stipulates that Member States may allow companies to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution if no shareholder requests a full account of the voting.

2.1.2. Shareholder Proposals and Calling a Meeting

A more material European shareholder right can be found in article 6 of the Shareholder Rights Directive: this article allows shareholders to put items on the agenda of the general meeting (accompanied by a justification or a draft resolution) or to table draft resolutions. The minimum threshold that Member States may set for this right cannot exceed 5% of the share capital. Shareholders may put voting items on the agenda where such an item falls within the decision-making powers of the general meeting. Items outside the purview of the AGM's decision-making powers may still be included on the agenda, but are only considered as a discussion item (also see Timmermans, 2012). Although the threshold for shareholders to put an item on the meeting's agenda in Europe is generally higher than in the US,[58] shareholders generally have more opportunities to initiate shareholder proposals in Europe: shareholder proposals are subject to

[58] In the US the threshold for adding a shareholder proposal to the proxy materials is only 1% or $2,000 in market value.

many rules in the US,[59] and are often precatory or very costly.[60] In contrast, the Shareholder Rights Directive does not place any of those restrictions on this right. Nevertheless, US shareholders generally place more items on the agenda than their European counterparts (e.g., Cziraki, Renneboog and Szilagyi, 2010; Renneboog and Szilagyi, 2013).[61] Consequently, there are more US legal and economic studies on these proposals, their contents and effectiveness.[62] Cziraki et al. (2010) is a good example of a European study on this matter. The authors use a sample of 290 shareholder proposals submitted in nine Member States between 1998 and 2008. This small sample size already indicates that shareholder proposals in (continental) Europe are relatively rare. Renneboog and Szilagyi's (2013) also demonstrates that shareholder proposals are not very common: the authors examine 42,170 management proposals and 329 shareholder proposals submitted to general meetings in seventeen European countries between 2005 and June 2010 (*cf. infra*, chapter 2 of this research also shows that there are few shareholder proposals in Europe).

In addition to the right to put items on the agenda, article 6 grants shareholders another right. It states that if Member States provide that shareholders may only put items on the agenda of AGMs and no other general meetings, shareholders have the right to call, or to require the company to call, a general meeting which is not an AGM with an agenda including at least all the items requested by those shareholders. We evaluate this right at the national level in section 5.1 of this chapter.

2.1.3. The Right to Ask Questions

In its Impact Assessment (*cf. supra,* section 2.1) the EC recognized that shareholders have the right to ask questions in every Member State, but, when shareholders were granted this right, it was sometimes too limited.[63] The EC stresses the importance of the right to ask questions: for example,

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[59] Although in the US the threshold for adding a shareholder proposal to the proxy materials is lower, these proposals may not fall under one of the thirteen so-called substantive grounds for exclusion. The grounds on which corporate boards may refuse shareholder proposals in their proxy statements include, for example, matters related to board elections, company's ordinary business operations and any opposition to a management proposal that is on the agenda. Thus, US shareholder proposals that are included in corporate proxy materials are often precatory, which means that corporations are not obliged to adopt these proposals even when it is passed by shareholders. Non-binding proposals are merely considered as recommendations by the SEC, being 'not a proper subject for action by shareholders" (Rule 14a-8(i)(1)) and thus usually allowed. Following the 2010 amendments 'eligible' shareholders with at least 3% of the total voting rights for at least three years may now include nominees for directors. However, this rule is only applicable if state law and the company's certificate of incorporation (articles of association) do not prohibit shareholders from nominating directors. Rule 14a-8 allows company proxy statements to include a shareholder proposal concerning an amendment to the certificate of incorporation regarding the possibility to adopt the right for shareholders to nominate directors (SEC, 2010). In case US shareholders want to add a (binding) proposal to the agenda that would be refused in the company's proxy materials, shareholders may engage in proxy contests. These are shareholder proposals that are solicited using shareholder's own proxy materials and hence, very costly.

[60] Shareholders may also file written consents. This right may be excluded in the certificate of incorporation and are subject to strict requirements. For an example, see Delaware § 211(b) DGCL and § 228 DGCL.

[61] For a comparison between the UK and the US, see Buchanan et al. (2012).

[62] For example, one may refer to Black (1998); Karpoff (2001); Romano (2001); Gillan and Starks (2000); Cotter and Thomas (2007), Thomas and Martin (1998).

[63] For example, in France, shareholders were only able to pose questions in writing prior to the AGM. And in Slovenia, the question only needed to be answered 'if the information is important for an assessment of the item on the agenda' (EC (2006b) Impact Assessment. Annex to the Proposal for a Directive of the

section 8 of the preamble of the Shareholder Rights Directive states that '[e]very shareholder should, in principle, have the possibility to ask questions related to items on the agenda of the general meeting and to have them answered, while the rules on how and when questions are to be asked and answered should be left to be determined by Member States'. Accordingly, article 9 of the Directive grants shareholders the general right to ask questions. Paragraph 1 of this article indicates that 'every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders'.[64] In accordance with the preamble, this paragraph thus limits the right to ask questions to the items on the agenda of the (A)GM. However, as we will see in section 4 of this chapter – since many Member States already included the right to ask questions in their national laws prior to the introduction of the Shareholder Rights Directive, and this Directive contains minimum harmonisation – for instance in the Netherlands – shareholder may also pose questions that are not (directly) related to the agenda of the AGM. Article 9(2) includes some other potential restrictions as well; Member States can take measures, or can allow companies to take measures to ensure the identification of shareholders, the good order of general meetings and their preparation, and protection of confidentiality and companies' business interests. Member States may also allow companies to provide one overall answer to questions that have the same content, and they may consider questions answered if the relevant information is available on the company's website in a 'question and answer' format.

2.2. Capital Directive

The Capital Directive (Directive 2012/30/EU), which is also referred to as the Second Company Law Directive, provides shareholders with decision-making rights concerning the company's share capital. With the Capital Directive, the Europe Union has introduced a framework of capital protection rules, including rules on constituting the company's capital, capital maintenance and capital increases (for example, see Cahn and Donald, 2010, pp. 165-259). Article 29(1) of the Capital

European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC, *SEC (2006) 181*. 17 February 2006, Appendix 3, Question 7.1).

[64] In an earlier version of article 9(1) of the Shareholder Rights Directive, the EC proposed: '1. Shareholders shall have the right to *ask questions orally at the general meeting and/or in written or electronic form ahead* of the general meeting' (EC (2006a) Proposal for a Directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC. *COM (2005) 685 final*. 5 January 2006. Emphasis added by the author). In amendment 28 the EP changed this provision to: 'Every shareholder shall *have the right to ask questions related to items on the agenda of the general meeting*. The company shall respond to the questions put to it by shareholders.' Furthermore, the third paragraph of the proposed article 9 saying, 'Responses to shareholder questions referred to in paragraph 1 shall be made available to all shareholders through the Internet site of the issuer' was removed by this amendment (European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC). As we will see in section 4 of this chapter, in some Member States the right to ask questions prior to the meeting is explicitly allowed in the national laws. Article 9 of the directive does not explicitly allow for written questions, but also does not exclude this possibility. Preamble 8 of the Shareholder Rights Directive states that the rules on how and when questions are to be asked and answered is left to be determined by Member States.

Directive stipulates that any increase in capital must be decided upon by the general meeting. Paragraph 2 of this article adds that the articles of association or the general meeting may authorise an increase in the subscribed capital up to a maximum amount within the boundaries of the national laws. The authorisation is for a period of 5 years and may be renewed by the general meeting, each time for a maximum period of 5 years.

The Capital Directive also requires shareholder approval for the waiver of pre-emption rights. Pre-emption rights are rights of existing shareholders to purchase newly issued stock in proportion to their current shareholdings. Article 33(4) explicitly states that shareholder pre-emption rights may not be restricted or withdrawn by the articles of association. Member States need to require a majority of at least two thirds of the votes for the restriction or cancellation of pre-emption rights pursuant to article 44 of this Directive. The second line of article 44 stipulates that Member States may provide for a simple majority in case at least half of the subscribed capital is present at the general meeting.

Article 21 of the Capital Directive includes rules for the repurchase of shares. Just like dividends, share repurchases are distributions to shareholders: when a company repurchases its shares it transfers company assets (the purchase price) to the shareholders from whom the shares are purchased. The general meeting may provide authorisation for share repurchases for a maximum term of five years. Member States may limit the amount of shares that can be bought back by the company, but this limit may not be lower than 10% of the subscribed capital.

Lastly, article 13(1) of the Capital Directive includes a post-incorporation rule that holds that if the company acquires any asset belonging to an incorporator within a period of not less than two years after the company is incorporated or authorised to commence business for a consideration of not less than one-tenth of the subscribed capital, the acquisition shall be audited and shareholder approval is required (*nachgründung*). The second paragraph includes exception grounds that include i) acquisitions effected in the normal course of the company's business, ii) acquisitions effected at the instance or under the supervision of an administrative or judicial authority, and iii) stock exchange acquisitions.

2.3. Other Directives

Article 37 of the Audit Directive (2006/43/EC, revised by Directive 2014/56/EU) requires a shareholder vote on the appointment of the auditor. However, the second line of article 37 allows Member States to permit alternative systems for the appointment of the auditor, provided that those ensure its independence from management board or executive directors. Directive 2014/56/EU adds: '[a]ny contractual clause restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be prohibited. Any such existing clauses shall be null and void'.

The Third Company Law Directive (Directive 2011/35/EC), Directive 2005/56/EC[65] and the Sixth Company Law Directive (Directive 82/891/EEC[66]) require a shareholder vote on a merger or demerger/division (article 7, article 9 and article 5 respectively). Furthermore, the Takeover

[65] Directive 2005/56/EC on cross-border mergers of limited liability companies, 2005, O.J. L 310/1.
[66] Directive 82/891/EEC based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, 1982 O.J. L 378.

Directive (Directive 2004/25/EC) allows shareholders to empower the corporate board in order to frustrate a bid (article 9). Without shareholder approval, the board is only able to seek alternative bids (white knights). This so-called board neutrality rule stems from UK Rule 21 of the Takeover Code ('non-frustration principle').[67]

Although not directly linked to the AGM, there is an information right that plays an important role in the decision-making function, in addition to the aforementioned directives: information disclosure rights regarding major shareholdings. The Transparency Directive grants (small) shareholders this information right. In the words of the Directive: '[t]he disclosure of accurate, comprehensive and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their business performance and assets. This enhances both investor protection and market efficiency' (preambule, paragraph 1 of Directive 2004/109/EC). Articles 9 and 10 set thresholds for disclosure, ranging from 5 to 75%. As we will see further in this chapter, many Member States have adopted lower thresholds as well.[68] Article 9 further adds that 'voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended'. The Commission Delegated Regulation (EU 2015/761)[69] provides further detail on the calculations.

2.4. Current European Framework of Shareholder Rights

In the introduction, we outlined three kinds of shareholder rights linked to AGMs; i) procedural rights, ii) information rights (including shareholders' forum rights as special information rights), and iii) decision-making rights. The latter two categories are more substantial rights that represent the three theoretical functions of AGMs. In the previous sections we discussed the directives that address these shareholder rights. For example, the Shareholder Rights Directive mostly involves procedural rights, except for two material rights: the right to put an item on the agenda (and the

[67] Although many Member States adopted this rule, the Netherlands and Germany, for example, did not, in accordance with article 12. This article allows Member States not to require companies to apply article 9. Germany adopted the 'reciprocity opt-in' following article 12(3) of this directive. For more information, see Clerc et al. (2012).

[68] Paragraph 12 of the Preamble of Directive 2013/50/EU indicates that: '[a] harmonised regime for notification of major holdings of voting rights, especially regarding the aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce the administrative burden for cross-border investors. Member States should therefore not be allowed to adopt more stringent rules than those provided for in Directive 2004/109/EC regarding the calculation of notification thresholds, aggregation of holdings of voting rights attaching to shares with holdings of voting rights relating to financial instruments, and exemptions from the notification requirements. However, taking into account the existing differences in ownership concentration in the Union, and the differences in company laws in the Union leading to the total number of shares differing from the total number of voting rights for some issuers, Member States should continue to be allowed to set both lower and additional thresholds for notification of holdings of voting rights, and to require equivalent notifications in relation to thresholds based on capital holdings. Moreover, Member States should continue to be allowed to set stricter obligations than those provided for in Directive 2004/109/EC with regard to the content (such as disclosure of shareholders' intentions), the process and the timing for notification, and to be able to require additional information regarding major holdings not provided for by Directive 2004/109/EC'.

[69] Commission Delegated Regulation (EU) 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings, 2015 O.J. L 120/2.

right to call a general meeting), and the right to ask questions. Most of the other directives grant some specific decision-making rights. We summarize these findings in table 1.[70]

[70] For a complete overview of European company law and corporate governance, see the EC website (<http://ec.europa.eu/internal_market/company/official/index_en.htm>).

TABLE 1

Current European Shareholder Rights Framework

Directive	**Rights**	**Procedural**	**Information**	**Decision-making**
Shareholder Rights Directive (Directive 2007/36/EC)	A minimum notice period of 21 days	x		
	Reduce minimum notice period of GMs to 14 days			x
	Information right to the publication of relevant information on the website	x	x	
	Share-blocking ban and introduction of a record date of maximum 30 days	x		
	Enhancement of ease of proxy voting	x		
	Right to put items on the agenda	x	x	x
	Right to call a general meeting	x	x	x
	Right to ask questions		x	
	Disclosure of voting results	x	x	
Second Company Law Directive (Directive 2012/30/EU)	Approval of capital increases			x
	Approval of waiver of pre-emption rights			x
	Approval of the repurchase of shares			x
	Approval of post-incorporation transactions			x
Audit Directive (Directive 2006/43/EC, amended by Directive 2014/56/EU)	Appointment of the auditor			x
Transparency Directive (Directive 2004/109/EC, amended by Directive 2013/50/EU)	Information right to disclosure of major shareholdings		x	
Third Company Law Directive (Directive 2011/35/EC)	Approval of mergers			x
Directive on Cross-Border Mergers (Directive 2005/56/EC)	Approval of mergers			x
Sixth Company Law Directive (Directive 82/891/EEC)	Approval of Divisions (demergers)			x
Takeover Directive (Directive 2004/25/EC)	Approval of frustrating a takeover bid			x

2.5. Current Developments: Shareholder Rights Directive

The EC introduced an action plan on 12 December, 2012, which combined corporate law and corporate governance rules (Hopt, 2015). Accordingly, on 9 April, 2014, the EC announced a package to improve corporate governance for listed companies, hoping to encourage long-term shareholder engagement and improve corporate governance reporting (EC, 2014a[71]; see also Johnston and Morrow, 2014). This package includes a proposal to revise the Shareholder Rights Directive. According to the EC, the Impact Assessment of the revision of the Shareholder Rights Directive has shown that i) institutional investor and asset manager engagement is insufficient; ii) the link between pay and director performance is insufficiently strong; iii) shareholders lack oversight on related party transactions; iv) there is too little transparency when it comes to proxy advisors; and iv) exercising shareholder rights is difficult and costly (EC, 2014b[72]). The EC argues that institutional investors and asset managers are too focused on short-term returns. Accordingly, one of the key elements of the proposal is to increase institutional investor and asset manager engagement (articles 3f to 3h in the proposal of the EC), requiring those investors to develop a policy on shareholder engagement. Regarding the link between pay and performance, the EC points to shortcomings in shareholder oversight and the disclosure of information. To strengthen this link, the EC proposes the introduction of a European say-on-pay right. The proposal states that the remuneration policy shall be submitted for approval by shareholders at least every three years. This say on pay is included in the proposed article 9a(1) that stipulates that 'companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been approved by shareholders', which indicates that the approval is binding. In addition to the approval of the remuneration policy *ex ante,* the proposed regulation also includes an advisory shareholder vote on the remuneration report *ex post,* included in the proposed article 9b(1) of the Shareholder Rights Directive. In cases where shareholders vote against the remuneration report, the company agrees to explain in the next remuneration report whether and, if so, how, the vote of the shareholders has been considered. However, the EP made some changes to the provisions in the proposed amendments by the EC on 8 July 2015. *Inter alia,* the EP added that Member States may limit the shareholder vote to an advisory one on the remuneration policy. When finalizing this research, the EP adopted its amended position on 14 March 2017 in its first reading. The Council adopted this version on 22 March 2017, and hence, the adoption of the amended Shareholder Rights Directive is completed;[73] the next step is the implementation into the Member States' national laws.

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[71] EC (2014a) Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement*, COM (2014) 213 final.* April 9, 2014.

[72] EC (2014b) Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement and Commission Recommendation on the quality of corporate governance reporting ('comply or explain'), *SWD(2014) 127 final.* April 9, 2014.

[73] With respect to the say on pay rights, article 9(a) now contains that 'Member States shall ensure that companies establish a remuneration policy as regards directors and that shareholders have the right to vote on the remuneration policy at the general meeting' (paragraph 1). Next, paragraph 2 stipulates: 'Member States shall ensure that the vote by the shareholders at the general meeting on the remuneration policy is binding. Companies shall pay remuneration to their directors only in accordance with a remuneration policy

The original proposal of the EC included a shareholder's say on substantial related-party transactions (those with a value of more than 5% of the company's assets) in article 9c. In the adopted version of 14 March 2017, the content of this article was changed, and a shareholder approval is not obliged anymore; paragraph 4 now states that 'Member States *may* provide for shareholders in the general meeting to have the right to vote on material transactions with related parties which have been approved by the administrative or supervisory body of the company' (emphasis added by the author). Besides these proposed provisions on say on pay and related-party transactions, the EC's proposal also *inter alia* includes transparency requirements for proxy advisors and an engagement policy requirement for institutional investors.

In the explanatory memorandum with the proposal the EC argues that cross-border shareholders (still) experience difficulties in exercising their shareholder rights because of intermediaries. Zetzsche (2008) agrees with the EC that cross-border voting needs to be improved. According to the author, voter turnout is inversely proportional to foreign ownership. He admits that there is no explicit empirical evidence for this, but argues that data may suggest that a majority of passive shareholders are foreign investors. According to Zetzsche, the Shareholder Rights Directive already lowers the procedural costs of cross-border voting as it harmonizes certain rules, stimulates electronic voting and disclosure of information and abolishes certain obstacles to shareholder voting. But it fails to improve the identification and authorisation of shareholders in a chain of intermediaries. Davies et al. (2011) also argue that even after the introduction of the Shareholder Rights Directive cross-border 'shareholders often are not informed about forthcoming shareholder meetings and cannot ensure that their votes are exercised through the chain of intermediaries. Typically, therefore, the voting rights remain unexercised' (p. 19). Accordingly, the EC proposed new rules for shareholder identification (article 3a), the transmission of information to shareholders (article 3b) and the facilitation of the exercise of shareholder rights (article 3c) which are, though in an amended version, adopted by the EP on 14 March 2017.

2.6. Concluding Remarks

The previous sections show that although corporate law is not completely harmonized at the European level, European directives include several shareholder rights. The Shareholder Rights Directive introduced many procedural rights intended to lower the costs of voting. Other

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that has been approved by the general meeting. Where no remuneration policy has been approved and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with its existing practices and shall submit a revised policy for approval at the following general meeting. Where an approved remuneration policy exists and the general meeting does not approve the proposed new policy, the company shall continue to pay remuneration to its directors in accordance with the existing approved policy and shall submit a revised policy for approval at the following general meeting'. However, paragraph 3 indicates that Member States may limit the say-on-pay right to an advisory vote: 'However, Member States may provide for the vote at the general meeting on the remuneration policy *to be advisory*. In that case, companies shall pay remuneration to their directors only in accordance with a remuneration policy that has been submitted to such a vote at the general meeting. Where the general meeting rejects the proposed remuneration policy, the company shall submit a revised policy to a vote at the following general meeting' (emphasis added by the author). In addition, one may note that the requirement to submit the remuneration policy for approval by the shareholders at least every three years was omitted (*cf. infra*, see also section 5.2.2. of this chapter). Instead, now paragraph 5 states that 'Member States shall ensure that companies submit the remuneration policy to a vote by the general meeting *at every material change and in any case at least every four years*' (emphasis added by the authors). See also Van der Elst and Lafarre (2017): in this article, the authors argue that the 3-year requirement is not desirable.

directives, such as the Capital Directive, grant some decision-making rights to shareholders. However, these rights are just a small part of the rights shareholders have generally: many of these rights are determined at the national level. Besides, as we will see in section 4.1 of this chapter, many Member States already provided for the shareholder question right in their national laws prior to the introduction of the Shareholder Rights Directive. It may thus come as no surprise that the largest part of this analysis is focused on national laws to unravel the many differences in the framework of AGMs among European Member States.

3. THE NATIONAL LEVEL: PROCEDURAL RIGHTS

Table 1 (*cf. supra,* section 2.4 of this chapter) shows that the Shareholder Rights Directive largely harmonizes the procedural rights of shareholders. For example, regarding proxy voting, before the implementation of the Shareholder Rights Directive in France, a shareholder was only allowed to be represented by another shareholder or by his spouse in accordance with article L.225-106 FCC. Nowadays, in accordance with article 10 of the Shareholder Rights Directive, shareholders have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. Despite the harmonization of several procedural aspects in the Shareholder Rights Directive, there are also many differences at the national level.[74] In this section we discuss: the meeting organisation, voting outcome procedures, voting methods that are available to shareholders, and participation procedures.

3.1. Meeting Organisation: AGMs and EGMs

All seven Member States make a distinction between the AGM, which is annually convened, usually some period after the end of the financial year – for instance, in the Netherlands and France this is within six months after the end of the financial year (respectively article 108(2) DCC and L.225-100 FCC) – and the EGM.

In general, EGMs are convened only in special cases, such as a merger or demerger, or a fundamental change to the structure of the company. This is the case in the Netherlands, the UK, Ireland, Germany, and Austria. In these countries, all proposals are usually submitted to the AGM. Some voting items require a special majority and/or a quorum, either stipulated by law or the articles of association, but these voting items are all considered in the same meeting. Usually, an EGM is only held when a shareholder calls a meeting or when shareholder approval is required and a decision cannot be postponed to the next AGM. For example, when shareholders reject the discharge of the supervisory board at the AGM in the Netherlands, companies usually organise an EGM to put this voting item to a second vote. Such was the case during the Vastned Retail 2009 AGM: shareholders rejected the discharge of the supervisory board members to respond to executive bonus grants that were not put to a shareholders' vote. In the EGM that was called later that year, the board announced that it would request prior shareholder approval before granting extra bonuses. In this second meeting, shareholder approval for discharge was granted (Van der Elst and Lafarre, 2017). In addition, the UK CA 2006 distinguishes between ordinary resolutions (including – but not limited to – receiving the annual accounts, board member (re-)election,

[74] For example, provision II.6 of the Austrian Corporate Governance Code 2012 (hereinafter: AGCG) states that the resolutions passed at the general meeting and the information required by the Austrian AktG shall be disclosed on the company's website at the latest on the 2nd workday after the general meeting.

remuneration report approval, auditor (re-)election, the auditor remuneration, the authorisation of the directors to allot shares, and the authorisation of political donations) on the one hand, and special resolutions that require a majority of 75% for approval ex section 283 CA 2006 (such as, but not limited to, the waiver of pre-emption rights and the authorisation to purchase own shares) on the other hand. Similarly, Ireland distinguishes between ordinary and special resolutions in ex section 191(2) Irish CA 2014.

In France, the general meeting is divided into two sections: ordinary (AGM) and extraordinary (EGM). Article L.225-96 FCC requires a quorum of 25% on the first call of the EGM and a two-thirds majority of the votes. At a second meeting, at least 20% of the shareholders (in terms of voting rights) is required. Decisions in the ordinary meeting require the presence of at least 20% of the voting rights (the first meeting, see Couret, 2011). An example of a resolution that needs to be submitted to the extraordinary meeting is any amendment to the articles of association (ex article L.225-96). In practice, the ordinary and extraordinary meetings are usually combined into one meeting – and thus called via the same meeting notice – which is called a mixed general assembly or a combined meeting (or in French: *assemblée generale mixte*). Besides the combined meeting, an EGM can also be called independently of an AGM, for the same purposes as described above for the other Member States.

In Belgium an EGM is required for extraordinary resolutions. Articles 558-560 WvV require varying qualified majorities for different extraordinary voting items. These extraordinary voting items include amendments to the articles of association ex article 558 WvV: these voting items require a quorum of 50% of the capital and a supermajority of 75%. No quorum is required at a second EGM that is called if the quorum is not met. In practice, the AGM (or ordinary general meeting) and the EGM often take place right after each other (same date, same place), but are (formally) not combined. For instance, these meetings have separate convocations, separate agendas, and separate minutes. For example, after the 2014 AGM of Befimmo NV which took place on 29 April 2014 (closed at 11.50 PM), the EGM was opened at 12.50 PM. In Belgium, an EGM can also be called independently of an AGM.

Besides the somewhat different approaches to the EGM, Belgium and France also have another kind of meeting: the special meeting (Belgium: *bijzondere algemene vergadering* ex article 556 *et seq.* WvV, France: *assemblée spéciale* ex article L.225-99 FCC). In Belgium the special meeting covers all decisions that do not coincide with the AGM and do not contain amendments to the articles of association. Article 556 WvV stipulates that the purpose of this special meeting is to grant rights to third parties that have an impact on the capital of the company, including a public takeover bid or change of control. In France, these special meetings are meetings for shareholders who hold a particular class of shares, rights to which are subject to change. Germany also has a type of special meeting: in accordance with section 141(3) AktG the holders of preferred shares need to approve any restriction or revocation of preference rights of these shares at a separate meeting (with a special majority of 75%).

3.2. Participation Procedures

Participation procedures also differ widely across Member States. For instance, the seven Member States require different minimum notice periods and record dates. Table 2 summarizes these different terms. Member States differ greatly on terms. In the Netherlands, the minimum notice period and the period between the record date and the meeting are the longest, whereas in the UK

and Ireland, these periods are relatively short (*cf. infra*, section 3 of chapter 6). In the next sections we discuss other relevant procedural rules that differ at the national level, including voting outcome procedures and different voting methods.

TABLE 2

Minimum notice period and record date

Country	**Minimum notice period**	**Record date**
Austria	28 days (or 21)	10 days
Belgium	30 days	14 days
France	35 days	3 business days
Germany	30 days	21 days
Ireland	21 days (or 14 for GMs if some requirements are met)	48 hours
Netherlands	42 days	28 days
UK	21 days (or 14 for GMs if some requirements are met)	48 hours
European requirement	at least 21 days (or 14 for GMs if some requirements are met)	30 days maximum

As we have seen in section 2.1.1 of this chapter, the Shareholder Rights Directive grants shareholders the right to appoint a proxy holder. Companies may now also allow electronic participation in AGMs. However, in many Member States electronic participation was already possible (at least to some extent) before the introduction of the Shareholder Rights Directive. In the Netherlands, electronic participation was introduced with the law of January 2007, *Wet elektronische communicatiemiddelen* in articles 2:117a DCC and 2:117b DCC. The articles of association can determine that electronic participation is possible (article 2:117a(1) DCC), and that shareholders are able to exercise their voting rights by electronic means prior to the AGM (article 2:117b(1) DCC). Article 2:117a(1) DCC stipulates that the articles of incorporation have the option of granting shareholders the right to use, either in person or through a representative acting by means of a written proxy, electronic means of communication to participate in the general meeting, to address the general meeting and to exercise his voting right. Hence, article 2:117a(1) DCC also offers the opportunity to introduce live webcasts with the possibility of real-time voting in order to participate in the AGM.

In France, the articles of association were also already empowered to make electronic participation – via video conferencing – possible prior to the introduction of the Shareholder Rights Directive (article L.225-107(II) FCC). Article 145-2 of the Decree no. 2002-803[75] stipulates that the video conference as mentioned in article L.225-107(II) FCC needs to satisfy technical conditions that guarantee the effective participation in the AGM that is continuously broadcast.

In the UK, electronic proxy voting has been provided for by ex section 333(2) CA 2006 since January 2007. This section stipulates that when a company has given an electronic address (either in an instrument of proxy sent out by the company in relation to the meeting, or in an invitation to appoint a proxy issued by the company in relation to the meeting), it is deemed to have agreed

[75] *Décret n° 2002-803 du 3 mai 2002 portant application de la troisième partie de la loi n° 2001-420 du 15 mai 2001 relative aux nouvelles régulations économiques.*

that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice). With the implementation of the Shareholder Rights Directive, section 360A CA 2006 was added, stating that that companies may conduct 'a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it' (paragraph 1). The new section 322A CA 2006 was also introduced to enable companies, in their articles of association, to make advance voting on a poll possible.

Other countries did not yet allow electronic participation and/or electronic proxy voting. In Ireland, the 'Shareholders' Rights (Directive 2007/36/EC) Regulations' amended section 136 Irish CA 1963, in order to allow for proxy voting by electronic means, and section 138 Irish CA 1963, in order to accommodate votes cast in advance. In Germany, electronic proxy voting was introduced in the amended section 134(3) AktG (also see section 135 AktG regarding asset managers) with the ARUG (*Entwurf eines Gesetzes zur Umsetzung der Aktionärsrechterichtlinie*). And in Austria, the 2009 Stock Corporation Amendment Act (*Aktienrechts Änderungsgesetz*; AktRÄG) gives the opportunity to include electronic participation in the articles of association ex section 102(3) Austrian AktG. More specifically, this article lists the following forms of electronic participation that closely resemble the three forms of participation that are mentioned in article 8 of the Shareholder Rights Directive: *satellitenversammlung* (i.e., realtime transmission), *fernteilnahme* (i.e., realtime transmission with the opportunity to address the meeting), and *fernabstimmung* (i.e., remote voting). Lastly, in Belgium the Shareholder Rights Directive was implemented with the '*Wet betreffende de uitoefening van bepaalde rechten van aandeelhouders van genoteerde vennootschappen*' of 20 December 2010, amended by the '*Wet 5 april 2011 tot wijziging van de wet van 20 december 2010 betreffende de uitoefening van bepaalde rechten van aandeelhouders van genoteerde vennootschappen*' of 18 April 2011 in order to delay its enactment to January 1, 2012. The new law introduced article 538bis WvV, which made the inclusion of electronic participation in the articles of association (for which a qualified majority is required, article 538bis) possible.[76]

One may note that votes cast prior to the AGM without the use of a proxy are generally irrevocable, and thus cannot be changed as a result of a discussion during the general meeting, whereas electronic proxy voting still gives shareholders the opportunity to attend the AGM and exercise their voting right personally (see for instance Van der Grinten and Kortmann, 2004). Moreover, it is possible for a shareholder watching a live webcast to contact his proxy holder to change his vote: according to Zetzsche (2008, p. 33), in this situation the proxy function is limited to that of a messenger. Hence, there is an important difference between these two voting methods. In this respect, the UK Department for Business, Innovation and Skills has indicated that the introduction of advance voting in the UK has little impact in practice, as shareholders will continuously make use of electronic proxy voting (following Ashurst London, 2009, *cf. infra*, chapter 4 of this research).

Today, all seven Member States offer some form of electronic participation in general meetings. A whole step further is the introduction of the virtual general meeting (Boros, 2004). The virtual

[76] Article 538bis WvV stipulates that: '*Voor de toepassing van het eerste lid moet het elektronische communicatiemiddel de aandeelhouder, onverminderd enige bij of krachtens de wet opgelegde beperking, ten minste in staat stellen om rechtstreeks, gelijktijdig en ononderbroken kennis te nemen van de besprekingen tijdens de vergadering en om het stemrecht uit te oefenen met betrekking tot alle punten waarover de vergadering zich dient uit te spreken. De statuten kunnen bepalen dat het elektronische communicatiemiddel de aandeelhouder bovendien in staat moet stellen om deel te nemen aan de beraadslagingen en om het recht uit te oefenen om vragen te stellen*'

general meeting replaces the physical AGM completely; the entire meeting is conducted solely online (Krans, van der 2009, p. 10). These kinds of meetings are often mentioned as a solution to practical problems such as shareholder absenteeism (Krans, van der 2009, p. 11, also see Zetzsche, 2008). However, to date, none of the seven Member States we studied have addressed the virtual general meeting in their legislation.

3.3. Voting Procedures

In this section we discuss a particular category of procedural rights that genuinely differ in the national laws of Member States: voting outcome procedures. For instance, one may ask whether there is a requirement for the presence of a minimum share of all shareholders with voting rights in order for a resolution to be valid. Is there a supermajority required for particular resolutions? And, are abstentions considered when determining whether or not a resolution received enough yes-votes to pass the majority criterion (Van der Schee, 2011)? In the previous section we already discussed some voting items which require special majorities in national laws. For example, in the UK and Ireland, special voting items require a majority of at least 75%. And in France, any amendment to the articles of association requires an extraordinary meeting and a two-thirds majority of the votes. In section five we discuss the different majority and quorum rules per voting item category for the seven Member States. In this section we focus on an important procedural aspect of AGMs. In particular, we focus on the question of how votes are counted in order to determine the voting outcome.

In order to answer this question for each Member State, we first need to determine the actions of the shareholders: shareholders may – when already attending the AGM – either i) vote in favour, ii) vote against, iii) abstain from voting or withhold their vote(s). In many Member States voting results do not take into account abstentions. In the UK and Ireland, abstentions (or votes withheld) are not considered to be votes in law and will not be counted in the calculation of the proportion of the votes for and against the resolution.[77] In Germany and Austria the number of abstentions (*zahl der enthaltungen*) does not play a role in the calculation of the voting results (ex section 133 AktG, *Aktiengesetz Heidelberger Kommentar*, 2008, p. 874). In Belgium the amount of abstentions (*onthoudingen*) are not taken into account either when the voting result is calculated for ordinary resolutions. However, an amendment of the articles of association (extraordinary resolution) requires that the amount of abstentions be added to the amount of votes against (De Backer, 2015, p. 107).

Article 2:120 DCC provides that a resolution (for which the law and/or articles of association do not require any qualified majority) is approved by *volstrekte meerderheid van de uitgebrachte stemmen* (absolute majority of the votes cast). Dutch legal scholarship agrees that a cast vote implies a declaration of intention, and hence, abstentions are generally not included in the number of votes cast. In earlier days, scholars sometimes distinguished blanks from abstentions. A statutory provision stating that blanks be included with the amount of votes against was not inconceivable (Schwarz, *GS Rechtspersonen,* article 2:120 DCC). Nowadays many large listed companies have

[77] For example, see the UK Corporate Governance Code (UKCGC), provision E.2.1. The Listing Rules of the Irish Stock Exchange (ISE) require that Irish incorporated listed companies on the Main Securities Market apply to the UKCGC on a comply or explain basis. The Irish Corporate Governance Annex (hereinafter: Irish CGA) states that the ISE recognizes that this Code has 'set the standard for corporate governance internationally" (p. 1 of Appendix 4).

explicitly adopted in their articles of association that these blanks *not* be included in the number of votes cast (ASMI NV, ASML NV and Koninklijke BAM Groep NV are some examples).

In contrast, in France the number of abstentions is *included* in the votes against ex article L.225-107 FCC. This can have a large impact on the voting outcome. For instance, assume that there is an absolute majority rule in place and a resolution receives 40,000 votes in favour, 30,000 votes against and 25,000 abstentions. In the case that abstentions are not taken into account, this resolution will be adopted: (votes in favour) / (votes in favour + votes against) = 40,000/ (40,000+30,000) * 100% = 57.1% *majority*. However, when abstentions are included in the calculation, we have: (votes in favour) / (votes in favour + votes against + abstentions) = 40,000/ (40,000+30,000+25,000) * 100% = 42.1% *minority*. It is important to keep this in mind for the empirical analysis in the next chapters.

Lastly, in France since the Florange law[78] (*cf. infra*, chapter 2, section 5.1.2), shareholders are automatically granted double voting rights to shares registered for more than two years (provided that the use of double voting rights is not prohibited in the articles of association). The law went into effect in April 2014. Some French listed companies had already granted these double voting rights to shareholders before the introduction of this law, usually after 'two years, although sometimes as long as ten' (Schumpeter Columnist, 2010).

3.4. Other Voting Methods

There are several ways shareholders can vote when they physically attend AGMs, but typically shareholders exercise their vote by either using the voting system, usually with electronic voting boxes (i.e., voting by poll), or by acclamation. In the UK, there is a particular way of voting: voting by 'a show of hands' (section 320 UK CA).[79] When this default voting method is used, each shareholder has one vote, regardless of its stake. This method completely restricts the power of blockholders. These blockholders, and directors, however, are able to call a poll instead of a vote by hands (section 321 UK CA). The UKCGC stipulates that where a vote has been taken on a show of hands, companies also need to disclose the amount of votes in favour, against and withheld (rule E.2.2).

How many UK companies use this 'show of hands' option? We analysed the voting results of FTSE-100 companies (505 AGMs, period 2010-2014, *cf. infra*, chapter 2 of this research), and found that this voting method was only used in 55 AGMs of 14 different companies (around 11% of our sample). Five of these companies only used this method during their 2010 and 2011 AGMs. G4S Plc, one of the companies that switched to voting by way of poll indicates in its 2012 notice of the meeting: '[v]oting on all Resolutions will be conducted by way of a poll rather than a show of hands. This is a more transparent method of voting as shareholders' votes are to be counted according to the number of shares held.' And GKN Plc states that '[t]his year the Board has determined that all resolutions will be decided by way of a poll instead of a show of hands'.[80] As we have seen in

[78] *LOI n° 2014-384 du 29 mars 2014 visant à reconquérir l'économie réelle*.

[79] In Ireland, this voting manner is explicitly allowed under national law in section 59 of Table A, First Schedule, Irish CA 1963. Besides the UK and Ireland, this voting method is used in other countries that are not included in our sample, including (but not limited to): Portugal, Sweden, Switzerland, and Australia.

[80] One may note that the second paragraph of article 14(1) of the Shareholder Rights Directive states that Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution. Section 341 CA 2006 only requires listed companies to

section 2.1.1, the Shareholder Rights Directive requires that companies establish the number of shares for which votes have been validly cast, and the number of votes cast in favour, against and abstentions for each resolution. It thus may not come as a surprise that more companies started to use voting by poll after the implementation of the Shareholder Rights Directive.[81]

3.5. Concluding Remarks

In this section we have seen that, although the Shareholder Rights Directive harmonizes part of the shareholder procedural rights related to AGMs, there are still many differences between countries. We have considered the meeting organisation, voting outcome procedures, voting methods and shareholder participation procedures. For example, regarding the meeting organisation, in Belgium and France the annual meeting is divided in an ordinary part, often referred to as the AGM, and an extraordinary part for certain resolutions, often referred to as the EGM. In contrast, in the Netherlands, Austria, Germany, the UK and Ireland the AGM considers all resolutions and EGMs are convened only in special cases. Furthermore, minimum notice periods and record dates differ substantially between Member States (*cf. supra*, table 2 in section 3.2) and participation and voting procedures are different as well.

4. THE NATIONAL LEVEL: INFORMATION RIGHTS

As we have seen in the introduction of this chapter, a shareholder needs access to information to make an informed voting decision. Shareholders have myriad information rights, stipulated in the company acts and in financial securities law to ensure well-functioning capital markets. Companies need to regularly disclose information, including (but not limited to) the publication of the financial statements and the annual report within a certain period after the ending of the financial year (in France, listed companies also provide the 'annual registration document'). These documents are made available prior to the general meeting via the company's website (*cf. supra*, following article 5 of the Shareholder Rights Directive).

In this section we first discuss special information rights which are related to the AGM by starting with shareholder forum rights (section 4.1). In section 4.2 we outline the national rules regarding mandatory ownership disclosure requirements, which are special information rights for (small) shareholders regarding company ownership structure. These information rights are closely linked to the decision-making function of AGMs, and reveal important information about voting structure and voting power.

4.1. Forum Rights

As we have seen in section 2 of this chapter, the Shareholder Rights Directive provides shareholders with the right to ask questions. However, since some countries had already adopted this right in their national laws before the implementation of this Directive and the Directive

publish the voting results when a poll is taken. However, in practice a majority of the companies that use voting by a 'show of hands' publish the voting results of the proxy votes. This is relevant for the analyses in the second chapter of this research (*cf. infra*, section 2 of chapter 2).

[81] For example, under Dutch law, when voting by acclamation is used, the chairman of the meeting counts the amount of votes against and abstentions. The remainder of the shareholders attending the meeting are included in the number of votes in favour. The Dutch company Accell Group NV uses this method.

contains minimum harmonisation requirements, there are significant differences across Member States. In addition to the right to ask questions (or to request information) during the AGM, many Member States also give the shareholder the right to speak in AGMs. One may note that this shareholder right goes beyond the right to request information that is required at the European level. However, in practice these two rights are largely intertwined (*cf. infra*, chapter 6 of this research). In the introduction chapter of this research we broached the question of how to involve as many (small) shareholders as possible to establish a 'shareholder democracy' while keeping AGMs to reasonable durations and discussions and questions meaningful to corporate matters (for example, Klaassen, 2011). Hence, we discuss not only the right to ask questions and to speak, but also the possible restrictions to these rights as stipulated in the national laws and by case law. In section 4.2 we consider the company's statutory provisions in a small empirical framework.

4.1.1. The UK

In the UK, the right to ask questions is, with the implementation of the Shareholder Rights Directive, incorporated in section 319A CA 2006 for traded (i.e., listed) companies. Before the implementation of the Directive the right to ask questions was already recognized in practice,[82] although there was no statutory obligation to answer them. *National Dwellings Society v Sykes* (1984) established that: '[u]nquestionably it is the duty of the chairman, and his function, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting' (p. 162, following Mayson, French and Ryan, 2016, p. 402). This phrase not only indicates that questions are allowed, but also considers the role of the chairman of the meeting (see below). Section 319A(1) CA 2006 states that 'the company must cause to be answered any question relating to the business being dealt with at the meeting put by a member attending the meeting'. Birds et al. (2013) clarifies that this section requires 'a traded company to answer any question put by a member at a general meeting' (p. 385). In addition, the UKCGC provides that the chairman of the board arranges for the chairmen of the audit, remuneration, and nomination committees to be available to answer questions at the AGM (provision E.2.3).

In accordance with article 9(2) of the Shareholder Rights Directive, paragraph two of section 319A UK CA 2006 stipulates the circumstances under which no answer need be given: '(a) if to do so would – (i) interfere unduly with the preparation for the meeting, or (ii) involve the disclosure of confidential information; (b) if the answer has already been given on a website in the form of an answer to a question; or (c) if it undesirable in the interests of the company or the good order of the meeting that the question be answered'. Siems (2013) explains that the chairman of the meeting in the UK should generally attempt to answer all questions that are posed during the general meeting. When the chairman is not able to answer a certain question, he or she can nominate a representative or a full answer could be deferred until after the general meeting. In the latter case, however, the shareholder who asked the question is not able to (immediately) respond and/or start a discussion, which undermines the forum function of the AGM. In this respect written questions – which are explicitly allowed under French and Belgian law as outlined below, but also common practice in other jurisdictions, including for instance, the Netherlands and the UK – contribute to the exercise of forum rights as answers can be prepared in advance. The chairman needs to be sure

[82] *National Dwellings Society v. Sykes* 1984 3 Ch 159. Following Van der Elst (2012b).

that one of the exceptions listed in section 319A CA 2006 applies when he refuses an answer to a question. In cases where a question is not in a company's interests or interferes with the good order of the meeting, the chairman should objectively explain why this is the case. Siems argues that if, for example, a shareholder intends to ask 100 questions (asked by 'Prof X' in Siems's hypothetical case study), it would certainly be valid to refuse to answer more than 30 questions to safeguard the good order of the meeting. Siems adds that courts in the UK are usually reluctant to challenge the chairman's decision to refuse an answer to a question, unless there is evidence of bad faith (also see the case *Re Piccadilly Radio Plc*[83]).

Lastly we note that section 319A CA 2006 only (explicitly) provides the right to ask questions to shareholders ('member attending the meeting'). However, section 324(1) CA 2006 states that '[a] member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company'. Provision 40(2) of the Model Articles also allows the chairman of the meeting to permit other persons who are not shareholders to speak at the AGM. From this one may derive that shareholders also have the right to speak in AGMs. Moreover, the Companies (Model Articles) Regulations 2008 (ex section 19 UK CA 2006) stipulate the right to speak in AGMs in provision 29(1): '[a] person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting'. Accordingly, provision 29(3) provides that '[t]he directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it'.[84]

4.1.2. Ireland

The Irish CA also needed to be amended to implement the Shareholder Rights Directive. The right to ask questions is now included in section 1107 of the Irish CA 2014. This section states that 'a member of a traded Plc has the right to ask questions related to items on the agenda of a general meeting and to have such questions answered by the Plc subject to any reasonable measures the Plc may take to ensure the identification of the member'. Paragraph two of this section outlines the situations wherein an answer would not be required: '(a) to give an answer would interfere unduly with the preparation for the meeting or the confidentiality and business interests of the Plc; (b) the answer has already been given on the Plc's website by means of what is commonly known as 'a question and answer forum'; or (c) it appears to the chairperson of the meeting that it is undesirable in the interests of good order of the meeting that the question be answered'. Shareholders also have the right to speak at the AGM in Ireland (this follows for example from section 1103 Irish CA 2014, which covers shareholder rights). The Irish provisions are similar to the provisions in the CA 2006 as both closely resemble the Shareholder Rights Directive.

[83] In this case, it was made clear that applicants had to have clear and compelling grounds before challenging a general meeting of a company or any resolution passed at that particular meeting in court (Siems 2013, p. 277).

[84] One may note that in contrast to the Model Articles, Table A does not explicitly contain the right to speak. From 1 October 2009, the Model Articles have replaced Table A as the default set of articles.

4.1.3. The Netherlands

Under Dutch law, the right to request information has been incorporated in article 2:107(2) DCC since 1971 (Deraedt, 2001). This provision states that the management board and supervisory board must provide the general meeting of shareholders with all requested information, such information would run contrary to a substantial company interest. According to the Dutch legislature this article already includes the right to ask questions as stipulated in article 9 of the Shareholder Rights Directive and hence, no new provision was adopted.[85] Since the Dutch provision includes the phrase 'unless a substantial interest of the company opposes this', it already entailed the second paragraph of article 9 of the Directive as well. In a parliamentary document, the Dutch legislature provides an example of a 'substantial interest' (in Dutch: *zwaarwichtig belang*): information that may harm the competitiveness of the company.[86] This example is in line with the 'business interests' as mentioned in the Shareholder Rights Directive. Whether the term 'substantial interest', should be interpreted in a broad or narrow way is not entirely clear. Scholars generally argue that the refusal of an answer should only be exceptional,[87] which corresponds to practice in the UK. Whether shareholders are able to file a claim on the grounds of article 2:107 DCC is yet unclear (see Deraedt, 2001, p. 167 for this discussion).[88] One may note that the right to ask questions is also provided to proxy holders that hold written proxies ex article 2:117 DCC (in Dutch: '*bij een schriftelijke gevolmachtigde*').[89]

Article 9(1) of the Shareholder Rights Directive grants the right to ask questions to every shareholder, which is not explicitly stated under Dutch law ('[e]very shareholder shall have the right to ask questions related to items on the agenda of the general meeting' versus 'must provide the general meeting of shareholders with all requested information'). The Dutch attorney general ('*advocaat-generaal*') concluded that the Dutch law should be interpreted in compliance with the Shareholder Rights Directive, and that each individual shareholder indeed may request information in AGMs under Dutch law.[90] Besides, he argues that, if the latter were not the case, shareholders would first need to discuss what information they would like to request together before requesting this information. This might be feasible in smaller, private companies, but not in (listed) public companies with a large shareholder base. Accordingly, whereas the Court of Amsterdam in an earlier verdict ruled that a shareholder has no individual right to request information (*Rechtbank*

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[85] *Kamerstukken* II (2008-2009) 31 746, no. 3 (*Memorie van Toelichting*), p. 15. The parliamentary document refers to, *inter alia,* Maeijer (2000). Also see Vletter-Van Dort (2001).

[86] *Kamerstukken* II (2008-2009) 31746, no. 3 (*Memorie van Toelichting*), p. 15.

[87] For example, refer to Van Solinge and Nieuwe Weme (2009) (2-II*), no. 327.

[88] Corporate law disputes are litigated before the Enterprise Chamber (*Ondernemingskamer*) of the Amsterdam Court of Appeals under an investigation procedure. Shareholders that fulfil particular requirements may request an investigation if there is reasonable ground to doubt a proper course of affairs (in Dutch: '*reden om aan een juist beleid te twijfelen*'). This procedure is called the '*enquêteprocedure*' (articles 2:344 up to 2:359 DCC). Article 2:107 DCC may play a role in such procedure (for instance, one may refer to the *Hoge Raad VIBA*-case, 2003).

[89] This follows from the Shareholder Rights Directive: proxy holders enjoy the same rights as shareholders, such as the right to ask questions (discussed below) and engage in discussions (provision 10(1) of the directive).

[90] *Hoge Raad* 9 July 2010, *JOR* 2010, 228, 3.6.2 (*ASMI*-case). In the *HBG*-case the right to request information also played a significant role (*Hoge Raad HBG*, 2003). For an overview of the discussion among Dutch scholars, one may refer to Dereadt (2001:165). For example, some Dutch scholars argue that this right is only a *collective* right of the AGM, but that on the grounds of reasonableness and fairness individual shareholders also have the right to request information (i.e., Van Schilfgaarde, 2013, no. 64). Others argue that in practice, individual shareholders usually exercise this information right (i.e., Vletter-van Dort, 2001).

Amsterdam 15 June 1988, KG 1988/276), the *Hoge Raad* ruled that every shareholder has this right (*ASMI*-case, *Hoge Raad* 9 July 2010, *JOR* 2010, 228).[91] With the *ASMI*-verdict and implementation of the Shareholder Rights Directive under Dutch law there remains no uncertainty regarding the individual right to request information.

The first sentence of article 9(1) of the Shareholder Rights Directive limits the scope of the questions to the items on the agenda of the AGM. In contrast, article 2:107(2) DCC does not limit this scope, and hence there may be reason to assume that individual shareholders will also have the right to request information about matters other than agenda items under Dutch law.[92] It is the general consensus that the shareholder questions be bounded by article 2:8 DCC. This article provides that shareholders (and other corporate actors) act in accordance with standards of reasonableness and fairness ('*redelijkheid en billijkheid*'). In this respect, article 2:107(2) DCC provides shareholders with a broader right than the Directive.

One may also recognize that Dutch law does not (explicitly) limit shareholders' right to request information during the AGM. Whereas Timmermans argues that individual shareholders have no right to request information outside the general meeting,[93] Van Schilfgaarde (2013, p. 217) suggests that individual shareholders may exercise their question right outside the general meeting under particular circumstances, but he does not explain how.[94]

Like in the UK, there are no legal provisions under Dutch law that explicitly allow the chairman to limit shareholders' question rights.[95] The role of the chairman is also not defined in the DCC. However, it is common practice that the chairman of the AGM, in accordance with standards of reasonableness and fairness, may limit the shareholder speaking time during the meeting (Klaassen, 2011, p. 67)[96], and may even refuse a shareholder's right to request information in particular cases (Huizink, *GS Rechtspersonen,* article 2:13 BW, no. 11). As we will see in section 4.2 of this chapter, some Dutch corporations adopted provisions regarding the limitation of speaking time for shareholders in their articles of association (*cf. infra*, next section). In the next section we discuss the German law: one may note that, in contrast to the jurisdictions discussed so far, Germany law provides the opportunity to arrange the authority of the chairman of the meeting to restrict shareholder forum rights in the articles of association.

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[91] One may also refer to Deraedt (2001). He also argues that not granting the right to ask questions to individual shareholders is not practical ('*[…] een aandeelhouder eerst zijn medeaandeelhouders om toestemming zou moeten vragen om namens de AVA inlichtingen te mogen vragen, lijkt mij weinig praktisch*', p. 165).

[92] In the *ASMI*-case, the Dutch Supreme Court (*Hoge Raad*) ruled that this is indeed the case (*r.o.* 4.6): '*Iedere aandeelhouder heeft voorts ter vergadering zelfstandig het recht vragen te stellen — ongeacht of deze betrekking hebben op punten die op de agenda zijn vermeld.*' (*Hoge Raad* 9 July 2010, *JOR* 2010, 228). One may also refer to Dereadt (2001), pp. 165-167; Schwarz, *GS Rechtspersonen*, article 2:107 DCC, no. 5.

[93] This opinion was adopted by the *Hoge Raad* in the *ASMI*-case (*Hoge Raad* 9 July 2010, *JOR* 2010, 228, r.o. 4.6).

[94] Van Schilfgaarde (2013) refers to article 2:8 DCC. In the *ASMI*-case, the *Hoge Raad* decided that the corporate board may decide whether or not to engage in discussions with (outsider) shareholders outside the AGM. (r.o. 4.6). Van Schilfgaarde also refers to the *Butôt*-case (*Hof Amsterdam* (OK) 17 February 2009, *JOR* 2009, 19) to explain that the claim of individual shareholders to this right does not have the same power as the claim of the AGM as a corporate body (p. 217, no. 64).

[95] In an earlier version of the revised DCGC (2008) the provision that the chairman of the meeting could limit the speaking time of shareholders was explicitly included. In a later stage this provision was again removed. Nowak (2009) claims that this provision was not important, as it included already common practice.

[96] Klaassen refers to: Van Solinge (1994); Van der Heijden and Van der Grinten (1992).

In addition to article 2:107 DCC, article 2:117(1) DCC provides individual shareholders ('every shareholder') with the right to speak during general meetings.

4.1.4. Germany

In Germany, the implementation of the Shareholder Rights Directive also did not require any amendments regarding the right to ask questions. In contrast to the general wording of the Dutch provision, the right of shareholders to request information is included in section 131 AktG in a detailed manner. Paragraph one of this provision stipulates that each shareholder shall be provided upon request with information in the general meeting regarding the company's affairs, to the extent that such information is necessary to permit a proper evaluation of the relevant item on the agenda. This wording *an sich* is stricter than the European provision. With the implementation of the Shareholder Rights Directive under Germany law this provision 'must be construed as simply meaning that the questions asked must be related to items on the agenda' (Kersting, 2009, p. 1, for a more advanced analysis see *Köhlner Kommentar zum Aktiengesetz*, no. 113, and no. 125 *et seq.*). Thus, this shareholder right has broadened with the introduction of the Shareholder Rights Directive. In an earlier version of the AktG, section 112 AktG 1937 granted the right to ask questions on all company matters ('*allen Angelegenheiten der Gesellschaft*'). It was recognized, however, that the board could refuse information on grounds of abuse of rights ('*Rechtsmissbrauchs*', *Köhlner Kommentar zum Aktiengesetz*, no. 379). It is the consensus that *rechtsmissbrauchs* already is contained in the necessity requirement (*erforderlich*) in the current section 131 AktG.

Section 131(3) AktG lists seven grounds on which information may be refused, including that the provision of information is likely to cause material damage to the company, that information is related to tax valuations and amounts, that provision of information would render the management board criminally liable, and that the information is continuously available on the company's website 7 or more days prior to the shareholders' meeting or during the general meeting. The last line of this paragraph indicates that these seven reasons are exhaustive grounds for denial of information. Paragraph four contains the right to request information outside the general meeting. If the information is provided to a shareholder outside the general meeting, this information should upon request be provided to the other shareholders during the general meeting. Paragraph five of section 131 AktG indicates that shareholders that did not receive an answer to their question have the right to request that the question and the reason the information was denied be included in the meeting's minutes. There is no justification duty in the particular situation that the board decides not to grant requested information, when this justification could trigger '*dies Spekulationen des Publikums*' that would have a detrimental effect to the company (*Köhlner Kommentar zum Aktiengesetz*, no. 507).

Of note is paragraph 2 of section 131 AktG. This paragraph explicitly states that the articles of association or the meeting's bylaws (section 129 AktG) may authorise the chairman of the meeting to limit the number of questions and shareholder speaking time as appropriate and may specify general rules regarding this matter.[97] The meaning of section 131(2) AktG has been clarified in case law. In the case *Karl-Walter Freitag/Biotest AG* (2010) the BGH confirmed that the chairman can indeed limit the shareholder speaking time. In this case, an active shareholder, Karl-Walter Freitag,

[97] Besides, the GCGC (*Kodex*) provision 2.2.4 says, '[t]he chair of the meeting provides for the expedient running of the General Meeting. In this, the chair should be guided by the fact that an ordinary general meeting is completed after 4 to 6 hours at the latest."

challenged a statutory provision that allowed the chairman of Biotest AG to limit shareholder speaking time under particular circumstances. More specifically, the provision stipulated that:

- the chairman may restrict the right to speak of shareholders in order to ensure that the meeting does not take more than six hours, or, in case there are some special items on the agenda, not more than ten hours in accordance.
- the chairman may restrict a shareholder's speaking time to fifteen minutes, or ten if at least three other speakers have registered for a particular agenda item.
- the total speaking time of a particular shareholder during the entire meeting can be limited to 45 minutes.
- the chairman can announce these restrictions at any time during the meeting, including at the beginning.
- the chairman may close the discussion at 10.30 PM in order to start with the voting.

Karl-Walter Freitag argued, *inter alia,* that the provision was too rigid, and that there should be a distinction between the right to ask questions and the right to speak. The BGH decided that the provision was in line with section 131(2) AktG and hence, allowed the statutory clause. The BGH concluded that the distinction between the right to ask questions and the right to speak is not necessary in accordance with the wordings of the law and the aim of the legislature (paragraph 31 of the verdict), and in practice such a distinction would not be easy: '*Angesichts dieser Abgrenzungsproblematik ist es nicht nur zulässig, sondern sachgerecht, die Einschätzung und eine ggf. entsprechend abgestufte Behandlung dem pflichtgemäß auszuübenden Ermessen des Versammlungsleiters im konkreten Einzelfall zu überlassen*' (paragraph 32 of the verdict). The BGH also agreed with the time limits that are mentioned in the statutory provision (paragraphs 32-35 of the verdict). With respect to paragraph two of the statutory provision that stated that the chairman can announce these restrictions at any time during the meeting, the BGH concluded that this is not a violation of section 131(2) AktG, in agreement with the prevailing opinion in the literature. The BGH noted that it sometimes only becomes clear during a meeting that this meeting cannot be carried out in an adequate and reasonable time. This does not mean that the chairman can always limit the speaking time of shareholders: the BGH emphasizes that arbitrary and inappropriate restrictions are not permitted under section 131(2) AktG and limitation is only allowed and lawfully announced after the chairman recognizes that there is sufficient evidence carrying out the AGM in an adequate and reasonable time is in danger.

In another case a decision to discharge was annulled by the *Landgericht München* (Munich District Court) because the chairman of the meeting restricted the speaking time of shareholders to five minutes prior to the meeting (*LG München I*, 2008). This meeting only took two hours and only two shareholders used their right to speak, and the court ruled that the authority to limit the speaking time of shareholders was not exercised in accordance with the proportionality principle (*verhältnismäßigkeitsgrundsatz*) and its objective.

Lastly, based on the wording of section 131(2) AktG and the verdict of the BGH we can conclude that in Germany shareholders also have the right not only to ask questions, but also to speak at general meetings.

4.1.5. Austria

The legal situation in Austria is very similar to Germany's (*Köhlner Kommentar zum Aktiengesetz*, no. 86). The right to request information is included in section 118 of the Austrian AktG. Paragraph 1

of this section closely resembles article 9(1) of the Shareholder Rights Directive but extends it by including the duty to provide information regarding the legal and business relationships of a company with an affiliated company. There are two grounds for refusal in paragraph three of section 118: i) significant commercial harm based on reasonable judgment, and ii) when the provision of information results in a criminal offence. Similar to German and UK law, and in line with the Directive, paragraph four adds that information may also be refused if it has been continuously available on the website in the form of a question and answer for at least seven days prior to the general meeting.

Unlike section 131(2) AktG in Germany, section 118 Austrian AktG does not explicitly allow the chairman of the meeting to restrict shareholder speaking time of shareholders. It also does not explicitly allow shareholders to speak in AGMs. However, as we will see in section 4 of this chapter, in practice a number of companies have adopted similar provisions in their articles of association. The right to speak in AGMs for shareholders seems to be common practice.[98]

4.1.6. France

In France, any shareholder has the right to submit written questions (*questions écrites*) after the date on which the relevant documents are made available, that are answered during the general meeting in accordance with article L.225-108(3) FCC. This right precedes the implementation of the Shareholder Rights Directive. Viandier (2004) argues that this right cannot be used to advocate a goal unrelated to the common interest ('*d'un étranger à l'intérêt social*'). Besides this right, there are also two other provisions regarding written questions: shareholders – acting individually or in concert – that have at least a particular voting stake[99] are able to submit written questions to the chairman of the (management) board regarding company or subsidiary operations *at all times* ex article L.225-231 jo L.225-120 FCC. The questions must be answered within a month ex L.225-231(2) FCC and the reply must be sent to the registered auditor as well: if the questions are not (satisfactorily) answered, shareholders may require the appointment of one or more experts. Similarly, article L.225-232 jo L.225-120 FCC stipulates that these shareholders are also able to address the chairman of the (management) board with written questions regarding any matter that threatens the company's affairs. According to this provision, the reply to these questions must also be sent to the auditor. These provisions are likely to cause impediments to the forum function of the AGM – in addition to those that we described in the introduction chapter of this study – as shareholders have more means to exercise their forum rights. One may note that the voting rights thresholds are not particularly high for larger companies.[100]

The Shareholder Rights Directive added two provisions: i) companies are allowed to provide one answer to similar questions (in French: '*une réponse commune peut être apportée à ces questions dès lors qu'elles présentent le même contenu*'), and; ii) the answer to a written question is considered to have been provided when it is on the Q&A section of the company's website ('*la réponse à une question écrite est réputée avoir été donnée dès lors qu'elle figure sur le site internet de la société dans une rubrique consacrée aux*

[98] One may, for example, refer to the meeting invitations of Österreichische Post AG or CA Immo AG.
[99] 5% of the voting rights for capital less than 750,000 euros; 4% for over 750,000 euros and up to 4,500,000 euros; 3% over 4,500,000 euros and up to 7,500,000 euros; 2%over 7,500,000 euros and up to 15,000,000 euros; 1% over 15,000,000 euros.
[100] These lower thresholds provide more opportunities for other shareholders, not being blockholders, to voice their concerns.

questions-réponses'). The right to ask oral questions during the general meeting cannot be found in the FCC, but is stipulated in article 1844 of the French Civil Code. Although in France proxy holders also have the same rights as shareholders, the right to ask questions is not explicitly provided to these participants of AGMs (but follows from the Shareholder Rights Directive).

Siems (2013, p. 264) explains that in France, the chairman of the general meeting has the right to end a long list of questions by one single shareholder to give the other shareholders the opportunity to ask questions. A French 1985 case decreed that a shareholder could not use the right to ask questions when a shareholder has other motivations for this question than obtaining needed information (*CA Paris*, 23 April 1985, following Siems, 2013, p. 264).

In contrast to the previously discussed Member States, shareholders generally do not have the (formal) right to speak in AGMs in France. However, as the German BGH observed, the right to ask questions and the right to speak are usually intertwined in practice.

4.1.7. Belgium

Belgium already gave shareholders the right to ask questions prior to the implementation of the Shareholder Rights Directive in article 540 WvV, but amended this provision by adding the right to submit questions in writing before the meeting. In addition, the Belgian legislature included the possibility to provide one overall answer to questions that have the same content. Article 540 WvV requires directors to reply to shareholder questions related to the agenda items or to the director's report to the extent that information is not confidential or harmful to company business interests (article 540 WvV, see below for the grounds for refusal). This right includes questions that are posed during the general meeting or written questions. Belgium is the only country in our sample that formally allows shareholders to not only question directors, but also auditors on their reports ex article 540 WvV (registered accountants, in Dutch: *commissarissen*). Board members and commissarissen are allowed to provide only one answer to questions that are related to the same subject, in accordance with the Directive. Like in France, the last section of article 540 now explicitly allows written questions. This would enhance the quality of the answers and the speed of answering per Hellemans (2011). Hellemans states that although this possibility is now formally adopted under Belgian law, in practice shareholders already submitted written questions before the introduction of the Directive. In Belgium proxy holders with written proxies may also ask questions (article 547bis WvV).

Shareholders have the right to ask questions ex article 540 WvV during the general meeting. Like their French counterparts (*cf. supra,* section 4.1.6), Belgian shareholders do not have the formal right to speak in AGMs. Refusal to answer is allowed when information is harmful to the business interests of the company or confidential. With the implementation of the Shareholder Rights Directive the formulation under Belgian law became: '*voor zover de mededeling van gegevens of feiten niet van dien aard is dat nadelig zou zijn voor de zakelijke belangen van de vennootschap of voor de vertrouwelijkheid waartoe de vennootschap of haar bestuurders zich hebben verbonden*' (following Hellemans, 2011, pp. 1335-1336, the emphasised words are changed in comparison with the older provision, also see Hellemans, 2001). With these two grounds of refusal the Belgian law resembles the Directive, but the legislature made clear that there was no change in the content of this provision (*Memorie van Toelichting*, 2010-2011, p. 35, following Hellemans, 2011). Hellemans argues that the Belgian provision is stricter than the one in the Directive.

The company may also refuse to answer questions in cases of misuse of the right to pose questions (Bénichou, Vanraes and Roseleth, 2013, p. 141, see also Braeckmans and Houben, 2012). The authors write that too many questions or questionable objectives can qualify as misuse. The Belgian Barco-case considered the right to request information. During the Barco NV AGM in 1998, peace activists that obtained a small minority stake asked questions about the involvement in the production of weapons. According to these activists not all their questions were (sufficiently) answered during this meeting and they claimed that they were hindered in exercising their right to request information. More specifically, in this meeting the board decided to close the question-and-answer session by a majority vote of the meeting. The Court of Appeals ruled that the right to request information cannot be limited by a majority vote of the general meeting, and that these questions about the involvement in the production of weapons should have been answered during the meeting. Initially it would seem that, other than the statutory restrictions that are provided in the law including the scope of the questions (questions should concern the agenda of the meeting or the report), shareholders' question rights generally cannot be limited in Belgium, which differs, for instance, from the German practice. However, we should add that according to Byttebier, Feldkamp and Janssens (2007) the main problem in this case was that the meeting's minutes did not go into sufficient detail about the misuse of the question right by these activist shareholders. Moreover, Belgian legal scholars have widely discussed this decision of the Court of Appeals. For instance, the question rights of shareholders should include at least a duty of loyalty (Byttebier, Feldkamp and Janssens, 2007). Baert (2002) argues that in this case, the question right was not exercised to request information, or at least, to discuss a difference in opinions in this case, but to intentionally slow down the decision-making process during the AGM. Wyckaert and Van Gerven (2002) question whether interest groups may use the right to question to promote their own goals, instead of the corporate interest. Moreover, these authors question whether it is fair that a small shareholder, promoting a goal that is unrelated to the corporate interest, be allowed to dominate the general meeting with questions that are irrelevant to a majority of the shareholders (Wyckaert and Van Gerven, 2002, following Byttebier, Feldkamp and Janssens, 2007).

The analysis of the national laws has shown that although shareholders have the right to request information in all seven Member States, the national provisions differ substantially. For instance, Belgian and French law explicitly allow for written questions. And in Germany the articles of association may contain detailed provisions regarding the authority of the chairman to limit shareholder forum rights. In the next section we take a further look at the corporate charters of companies from the seven Member States in order to further explore the shareholder forum rights.

4.1.8. Charter Provisions

In order to see whether companies regularly provide the chairman of the meeting with the explicit authority to limit the right to ask questions (and the right to speak) – and to what extent – we investigate the latest versions[101] of the articles of association of the companies in our sample that we also use in the remainder of this study (for the sample *cf. infra*, section 2 of chapter 2). As expected, in accordance with the national statutory provisions, companies that are listed in the UK,

[101] Our research ended in the summer of 2015.

Ireland and Belgium do not authorise the chairman of the meeting to limit the question right in their articles of association. We provide an overview of these findings in the following table:

TABLE 3

Provisions to Limit Speaking and Question Time per Country

Country	*# companies*	*# companies with limiting provisions*
Austria	22	5
Belgium	17	0
France	37	1
Germany	32	31
Ireland	18	0
Netherlands	24	5
UK	101	0
Total	*251*	*42*

Of the 24 Dutch companies in our sample, only a few companies explicitly mention the power of the chairman of the meeting to limit shareholder speaking time. Only three companies have adopted a general clause. These are: Philips NV, Ahold NV, and Wolters Kluwer NV. For example, provision 28(1) of the articles of Philips NV stipulates that '*[d]e voorzitter kan de spreektijd rantsoeneren indien hij zulks met het oog op een goed verloop van de vergadering gewenst acht*' (translation: '[t]he chairman may restrict the time for which shareholders may speak, if he considers this to be desirable with a view to the orderly conduct of the meeting'). Just like the statutory provision of Philips NV, the articles of association of Ahold NV and Wolters Kluwer NV do not provide specific circumstances and time limits[102], unlike the statutory provisions of Biotest AG (section 4.1.4 of this study). The three companies speak of an 'orderly' progress, manner or conduct. What this 'orderly' progress entails, is for the chairman to determine. Wolters Kluwer NV adds that on the proposal of the chairman or of a shareholder *the meeting* may resolve to order a speaker to stop. And Ahold NV explicitly indicates that the chairman needs to take into account the agenda of the meeting when deciding to restrict the speaking time.

Besides these three companies, there are two other Dutch companies that implicitly allow the chairman to restrict shareholder speaking time. SBM Offshore NV stipulates that '[a]ll issues concerning admittance to the General Meeting, concerning the exercising of the voting right and the outcome of votes, *as well as all other issues relating to the proceedings at the meeting*,[103] shall

[102] Wolters Kluwer stipulates that '[t]he chairman of the meeting may limit the speaking time at the meeting or take such other measures that the meeting proceeds in an orderly manner. On the proposal of the chairman or of a shareholder the meeting may resolve to order a speaker to stop.' (article 37(9), available via <http://www.wolterskluwer.com/Corporate-Governance/Documents/StatutenWolters_Kluwer_NV_ENG.pdf>). (accessed in March 2015). The articles of Ahold NV state that 'the chairman shall determine the order of proceedings at the meeting with due observance of the agenda and he may restrict the allotted speaking time or take other measures to ensure orderly progress of the meeting" (article 30(2), available via <https://www.ahold.com/web/file?uuid=6a5710fa-fd5b-4940-883a-ceb58160ad9c&owner=f6216a8f-4a2d-494f-8168-ae6cd1765756&contentid=2096>). (accessed in March 2015).

[103] In Dutch: '*zomede alle andere kwesties, welke verband houden met de gang van zaken in de vergadering*'.

notwithstanding the provisions of section 2:13 subsection 4 [DCC], be decided by the chairman of the meeting in question.' (provision 33(2), emphasis added by the author). Similarly, Koninklijke BAM Group NV writes: 'all matters relating to admittance to the General Meeting, exercising voting rights and the results of the votes and all other matters relating to the proceedings of the meeting[104] shall be decided upon by the Chairman of the meeting concerned, without prejudice to the provisions of Article 2:13, paragraphs 3 and 4 [DCC]' (provision 27(6)).

In contrast, 31 of the 32 DAX-30 companies in our sample included a provision in their articles of association that endowed the chairman of the meeting with the authority to place some reasonable limits to shareholder speaking and question rights. Some of these provisions are more elaborate than others. For example, provision 19(3) of the charter of E.ON AG stipulates that: '[t]he Chairman of the General Meeting *may reasonably restrict*, *in terms of time, the right of shareholders to put questions and to speak. At the beginning or in the course* of the General Meeting, he may, in particular, determine an appropriate framework, in terms of time, for *both the course* of the General Meeting and *the discussion on individual items on the agenda as well as for individual questions and speaking contributions*. In determining the time available for the individual questions and speaking contributions, the Chairman of the General Meeting *may distinguish between first and repeated contributions and in accordance with further appropriate criteria*' (emphasis added by the author). Several elements are noteworthy. First, text specifies the timing for limiting the speaking and question rights: the chairman has the power to put a limit to these rights at the beginning and during the meeting. Next, the chairman may determine an appropriate duration for the AGM. He may also limit the duration of individual questions and 'speaking contributions'. Lastly, the chairman may distinguish between first and repeated contributions. These four elements are rather similar to the contested provisions of Biotest AG, except that they do not set specific time limits, but leave the exact duration to the discretion of the chairman of the meeting. None of the companies in our sample provide specific time slots. Note that the BGH has allowed each of these elements in the Karl-Walter Freitag/Biotest AG case.

While the provision of E.ON AG consists of several elements and is relatively elaborate, provision 10(4) of the articles of association of Salzgitter SA only states: '*er kann das Frage- und Rederecht des Aktionärs zeitlich angemessen beschränken*'. Translation: 'he may limit the question and speaking time of shareholders as appropriate', where 'he' (or '*er*') refers to the chairman of the meeting. 22 of the companies in our sample explicitly authorise the chairman to limit the speaking and question time of shareholders at the beginning or during the meeting. Besides these 22 companies, Fresenius Medical Care AG and Volkswagen AG use the wording 'from the beginning'. Only 7 of the companies that has a provision in their articles of association to be able to limit the speaking and question time, do not indicate any specific moment.[105] Only 3 companies explicitly include in their provisions that the chairman may distinguish between first and repeated speaking contributions. These are: Allianz AG, E.ON AG and Muenchener Rueckversicherungs AG. All 31 companies included terms such as 'reasonably' or 'appropriately' in their provisions, in correspondence with the phrasing of section 131(2) AktG.

5 Austrian companies in our sample authorise the chairman to limit speaking and question time in their articles of association. These companies are: CA Immobilien Anlagen AG, Erste Group

[104] The same wording is used in the Dutch version of the articles of association as SBM Offshore NV.
[105] These companies are; BMW AG (Bayerische Motoren Werke), Continental AG, Deutsche Telekom, MAN SE, Metro AG, Salzgitter AG and SAP SE.

Bank AG, Raiffeisen Bank AG, Flughaven Wien AG and Strabag SE. Three of these explicitly stipulate that the chairman may limit the speaking and question time at the beginning and during the meeting. Provision 19(2) of Strabag SE's articles of association is the most detailed one, holding that: '*ferner kann er das Frage- und Rederecht der Aktionäre zeitlich angemessen beschränken. Er kann insbesondere zu Beginn oder auch während der Hauptversammlung eine maximale Redezeit von 10 Minuten festlegen. Dabei ist es ihm gestattet, die Wortmeldungen zu den Tagesordnungspunkten oder einzelne Frage- und Redebeiträge zu ordnen sowie die höchst zulässige Redezeit pro Redner je nach Bedarf weiter zu verkürzen und die Rednerliste vorzeitig zu schließen. Der Vorsitzende der Hauptversammlung kann bei Festlegung der für den einzelnen Frage- und Redebeitrag zur Verfügung stehenden Zeitrahmen auch zwischen erster und wiederholter Wortmeldung sowie nach weiteren sachgerechten Kriterien unterscheiden. Weiters ist es dem Vorsitzenden der Hauptversammlung gestattet, zur Sicherung des Laufes der Hauptversammlung gegen einzelne Aktionäre individuelle, unbedingt notwendige Maßnahmen zu setzen*' (emphasis added by the author). This provision is relatively strict and empowers the chairman to restrict speaking and question time to ten minutes. Moreover, the chairman is allowed to close the list of speakers in advance and may distinguish between first and repeated contributions. The last sentence of provision 19(2) allows the chairman to take the required measures against a particular shareholder in order to ensure the orderly progress of the meeting.

Of the 17 Belgian companies in our sample, none has included a provision in their articles of association to restrict shareholder speaking and question time of shareholders. The only 'French'[106] company that explicitly provides the chairman with the authority to restrict the speaking and question time is in fact a Dutch company: St Microelectronics NV. Provision 30(1) of its articles holds that the general meeting of shareholders may lay down rules regulating, *inter alia*, the length of time for which shareholders may speak. When these rules do not apply, the chairman may regulate the time for which shareholders may speak if he considers this to be desirable with a view to the orderly conduct of the meeting.

None of the ISEQ-20 and FTSE-100 companies that are included in our sample (explicitly) gave the chairman the authority to limit shareholder question rights either. However, some companies have adopted provisions in their articles that are in line with national statutory laws ('good order of the meeting'). The second line of provision 67 of the articles of association of CRH Plc (Irish) holds that 'the Chairman of a general meeting may interrupt or adjourn such meeting without the consent of the meeting where he decides it is necessary to do so in order to (a) secure the proper and orderly conduct of the meeting; (b) allow people entitled to do so *a reasonable opportunity of speaking* and voting at the meeting or (c) ensure that the business of the meeting is properly disposed of" (emphasis added by the author). This provision permits the chairman to interrupt the meeting – for example, when a shareholder is engaging in a monologue – in order to provide (other) shareholders a reasonable opportunity to speak.[107] Some FSTE-100 companies include in their articles of association that the inability for any reason of any member present in person or by proxy at such a venue to view or hear all or any of the proceedings of the meeting or to speak at the meeting shall not in any way affect the validity of the proceedings of the meeting.[108]

[106] St Microelectronics NV was listed to the CAC-40 until the end of 2013, but is established in Amsterdam. For the sample selection requirements, one may refer to chapter two of this study.

[107] Other companies that included a similar provision in their articles of association are, *inter alia*, BHP Billiton Plc, HSBC Holdings Plc and GKN Plc.

[108] Phrasing is taken from provision 70 of the articles of association of Vedanta Resources Plc.

4.2. Ownership Disclosure

In this section we discuss an important information right for actors in the financial markets, including (small) shareholders: the disclosure of major holdings. As we have seen when discussing the European framework of shareholder rights, this information right is not directly linked to the AGM. Disclosure of ownership stakes plays a large albeit indirect role in the decision-making of (small) shareholders as the disclosed information may shape their expectations regarding the voting results and their voting power (*cf. infra*, subsequent chapters). Disclosure obligations for major holdings stem from the Transparency Directive (amended in 2013 with Directive 2013/50/EU,[109] and originally from Directive 88/627/ EEC), but leave room for additional national requirements. The lowest disclosure threshold mentioned in Directive 2013/50/EU (and Directive 2004/109/EC) is 5%. Member States are allowed to set more stringent rules than those provided for in Directive 2004/109/EC regarding i) lower and additional thresholds for notification of holdings of voting rights and capital holdings, and ii) the content of the disclosure (the Directive provides the example of the disclosure of shareholders' intentions), the process and the timing for notification (see paragraph 12 of the Preamble of Directive 2013/50/EU). Hence, here, too, we see some differences among Member States. In the analysis below we briefly outline disclosure thresholds and calculation methods in different Member States, as these are relevant for our empirical analyses in the subsequent chapters of our research.

In the UK, before the introduction of the Transparency Directive, disclosure rules were outlined in sections 198-211 of the UK CA 1985. Today, transparency rules are part of the Disclosure and Transparency Rules (DTR) of the FSA. DTR 5.2.1 of the FCA in the UK requires a lowest mandatory disclosure threshold of 3%; it requires notification for a shareholding or holding of financial instruments that 'reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100%'[110]. DTR 5.6.1 states that the company must disclose its total number of voting rights and the total number of votes that are attached to treasury shares. Under the FCA's DTR, 'voting rights must be calculated on the basis of all the shares to which voting rights are attached even if the exercise of such rights is suspended and shall be given in respect of all shares to which voting rights are attached' (DTR 5.8.7, in line with article 9(1) of the Transparency Directive, Directive 2004/109/EC).

In Ireland, in accordance with article 14(4) of the Transparency Regulations 2007 (amended in 2015), shareholders are obliged to disclose their shareholding if it reaches, exceeds or falls below the threshold of 5%, 10%, 15%, 20%, 30%, 50% and 75%. The Transparency Rules of the Irish Central Bank require shareholders and holders of financial instruments of listed companies[111] to disclose their shareholding if it reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% as a result of an acquisition or disposal of shares or financial instruments, or 'as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the issuer in accordance with Regulation 20'.[112] Article 19(2) of

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[109] Member States had two years to implement the changes as a result of this Directive and hence, the new rules do not apply to our empirical analyses in chapters 2-4 (*cf. infra*, chapter 2, nt. 250). *Inter alia,* the changes contain the notification requirements for financial instruments.

[110] In the case of a non-UK issuer the thresholds 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% apply.

[111] In particular, Rule 7.0 refers to 'issuers whose securities are admitted to trading on a regulated market and whose Home Member State is the State and to issuers whose shares are admitted to trading in a market prescribed by the Minister in accordance with Section 24 of the Act of 2006'.

[112] Similar to UK rules, in case of a non-Irish issuer the thresholds 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% apply.

the Transparency Regulations stipulates that the shareholding percentage should be calculated on the basis of the total number of shares to which voting rights are attached.

Shareholders are required to disclose their substantial shareholdings and short positions ex article 5:38 *et seq*. Wft (Dutch Act on Financial Supervision, in Dutch: *Wet op het financieel toezicht*) under Dutch law. Article 5:38(4) Wft sets the thresholds for the disclosure obligation at 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%. Disclosure is required when a shareholder either actively obtains or loses shares, or passively reaches, exceeds or falls below one of these thresholds in terms of his share capital stake (ex article 5:38(1) Wft and article 5:39(1) Wft), in terms of his voting rights stake (ex article 5:38(2) Wft) or in terms of his financial instruments with a short position (percentage of the share capital, ex article 5:38(3) Wft and 5:39(2) Wft). Next, article 5:40 Wft stipulates that a shareholder who obtains or loses shares with a special statutory control right also needs to disclose this shareholding, if not yet reported under article 5:38(1) Wft (this requirement is not subject to any threshold).

The calculation of major holdings is more complex in the Netherlands than in the other six countries in our sample. The analysis above already indicates that three kinds of major holdings subject to disclosure thresholds exist: i) share capital stakes, ii) voting rights stakes, and iii) share capital stakes that follow from short positions[113]. As Dutch law stipulates that a notification of a shareholding must offer insights into the composition of this holding, a distinction must be made between direct (Dutch: *rechtstreeks*) and indirect (Dutch: *middelijk*) disposal share capital stakes and/or voting rights stakes. These two categories are subdivided into actual (Dutch: *reëel*), i.e., when there is an actual disposal, and potential (Dutch: *potentieel*), i.e., when there is a right to acquire the stake. The share capital holding is calculated as the nominal value of the shares to be allocated to a person divided by the total issued (nominal) share capital of the company. The share capital stake is calculated as: (the nominal value of the shares to be allocated to a shareholder)/(the total issued (nominal) share capital of the company)*100%. The voting rights stake is calculated as: (the number of votes a shareholder is entitled to cast at an AGM)/(the theoretical, maximum number of votes to be cast with respect to company shares)*100%.[114] Although the Dutch financial markets authority (AFM) recognizes that the voting rights of treasury shares may not be exercised, treasury shares must be taken into account in the calculations of the shareholdings in accordance with the Shareholder Guideline and with Directive 2013/50/EU (and Directive 2004/109/EC). The AFM explains that shareholders need to disclose both stakes, i.e., share capital stake and voting rights stake, as the one-share-one-vote principle is often not adhered in practice.

Under German law, a shareholder must disclose his or her shareholding when he or she acquires, or the shareholding exceeds or falls below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the voting rights according to section 21 Wertpapierhandelsgesetz (WpHG). Section 22(1) WpHG stipulates the voting rights that need to be counted additionally. Paragraph two of this section adds that these additional voting rights must be indicated separately in the notifications. Treasury shares must also be taken into account. As of January 2013, the Austrian Stock Exchange Act (*BörseG*) contains an additional disclosure requirement for shareholders reaching, exceeding or falling below the 4% ownership threshold in a publicly traded company. In addition to this 4%

[113] We will not address the calculation of a short position in this study, as this would be outside its scope. In the Shareholder Guideline of the Dutch financial markets authority (AFM) one may find a detailed description of the calculation method, including a simple calculation example (pp. 29-31). Financial Supervision Act Guideline for Shareholders is available via <www.afm.nl>.

[114] Shareholder Guideline, p. 28.

threshold, shareholders must also disclose when reaching, exceeding or falling below a threshold of 5%, and all multiples thereof. Companies can lower the lowest threshold in their articles of association to 3%. Paragraph 91 *BörseG* stipulates that 'the percentage of voting rights […] shall be calculated based on the total number of shares with voting rights, even if the exercise of such voting rights has been suspended', which includes own shares, in accordance with the Transparency Directive.

The General Regulation of the French Financial Markets Authority (*Autorité des Marchés Financiers*, AMF) requires that 'the total number of voting rights [be] calculated on the basis of all the equities to which voting rights are attached, including equities whose voting rights have been suspended' (article 223-11). In addition to this number, most companies report the total number of voting rights that can be exercised as well.[115] The lowest mandatory disclosure threshold in France is 5% (article L.233-7 FCC)[116], but the articles of association may stipulate additional disclosure thresholds, which may not be less than 0.5% of the capital or voting rights.

In Belgium, the *Transparantiewet*[117] stipulates that the disclosure thresholds are 5%, 10%, 15%, 20% and each 5% threshold thereafter up to 100% are obligatory for shareholders (article 6 Transparantiewet). Besides these legal thresholds, companies can require additional thresholds in their articles of association of 1%, 2%, 3%, 4% and 7.5% (article 18 Transparantiewet). According to article 9 Transparantiewet, shareholders must use total voting rights including treasury shares as the denominator for the calculation of their voting stake.[118]

4.3. Concluding Remarks

In the previous sections, we have provided an overview of shareholder information rights, focussing on shareholder forum rights and disclosure obligations in particular. We have seen that, in accordance with European law, shareholders have the right to ask questions in all seven European Member States, but that there are many differences among the national provisions. Many Member States already guaranteed some forum rights to shareholders before the introduction of the Shareholder Rights Directive. For example, in the Netherlands, the right to request information was already implemented in 1971. And since the Directive contains minimum harmonisation requirements, many countries did not adapt these existing shareholder rights to the Directive. Thus, national laws sometimes offer shareholders broader rights. For instance, in the Netherlands, the shareholder question right is not limited to the agenda of the meeting. And, for example, in France, the FCC offers shareholders more formal possibilities to submit written questions. As we have seen, in all Member States the chairman of the meeting has, at least to some extent, the authority to limit shareholders' forum rights in (the exceptional) case that the good conduct of the

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115 For example, see the annual reports of Vallourec (section breakdown of share capital and voting rights).

116 Article L.233-7 FCC states: '[…]*qui vient à posséder un nombre d'actions représentant plus du vingtième, du dixième, des trois vingtièmes, du cinquième, du quart, des trois dixièmes, du tiers, de la moitié, des deux tiers, des dix-huit vingtièmes ou des dix-neuf vingtièmes du capital ou des droits de vote informe la société dans un délai fixé par décret en Conseil d'Etat, à compter du franchissement du seuil de participation, du nombre total d'actions ou de droits de vote qu'elle possède.*'

117 '*Wet op de openbaarmaking van belangrijke deelnemingen in emittenten waarvan aandelen zijn toegelaten tot de verhandeling op een gereglementeerde markt en houdende diverse bepalingen*' (*Wet van 2 mei 2007*).

118 Article 9(1) Transparantiewet: *'[v]oor de berekening van de stemrechtenquota bedoeld in artikel 6 worden de stemrechtverlenende effecten in aanmerking genomen a rato van het aantal bestaande stemrechten waarop zij recht geven; en worden de stemrechten verbonden aan stemrechtverlenende effecten in aanmerking genomen niettegenstaande de gebeurlijke opschorting van de uitoefening ervan*'.

meeting is undermined. The analysis of the articles of association shows that German listed companies include detailed provisions on this matter. This is not very surprising as the AktG explicitly provides for this. For Austria and the Netherlands, we found that some companies have also included some provision in their articles. In the other countries, this is not common practice. In chapter 6 of this research we will further consider the use of shareholders' forum rights in Dutch AGMs and, *inter alia*, investigate whether the explicit possibility to limit shareholder forum rights in the articles of association under German law would be recommended for the Netherlands as well.

We have seen that ownership disclosure obligations differ (to some extent) at the national level as well. For instance, some countries add a minimum disclosure threshold of 3%, whereas the minimum disclosure threshold in the Transparency Directive is 5%. Although this (small) shareholder information right is not directly linked to AGMs, it plays an important role in the empirical analyses in the subsequent chapters. Before we turn to these empirical analyses in the next chapters, we first provide an outline of shareholder decision-making rights in the next section.

5. THE NATIONAL LEVEL: DECISION-MAKING RIGHTS

In section 3 of this study we already have seen that the content of AGM agendas is not harmonized at the European level, except for capital resolutions and merger approval (to some extent). In this part of the research we consider the national framework of shareholder decision-making rights. We consider regular decision-making rights separately, among these; approval of director elections, say on pay resolutions, capital resolutions and amendments to the articles of association. Besides these, we also consider other (non-recurrent) voting items. The findings from the analysis in this section are used for the empirical research in the subsequent chapters of this thesis.

Before we discuss these decision-making rights it is important to note that these decision-making rights are merely *approval rights*: in practice, shareholders usually decide whether to approve a resolution prepared by the corporate board.[119] This is not the case for shareholder proposals (*cf. infra*, next section). In some cases, shareholders also have special rights, e.g., different classes of shares, attached to priority shares, or shareholder committees (in the Netherlands: article 2:158(10) DCC in companies that fall under the *structuurregeling*, *cf. infra*, section 5.2.1).

5.1. Shareholder Proposals

The rights to put items on the agenda and to call a general meeting are included in the Shareholder Rights Directive. Although we are classing these two particular shareholder rights under 'decision-making rights', these are not only decision-making rights, but may also be considered information rights as shareholders may only add voting items to the meeting's agenda that do not interfere with the decision-making powers of other corporate bodies. Items that are outside the decision-making authority of the AGM can be placed on the agenda solely as discussion items.

Few substantial differences across our seven Member States regarding the right to put items on the agenda or to call a general meeting exist. Some countries have set a lower threshold than

[119] For instance, in the Netherlands, article 2:133(1) DCC states that the articles of association may provide that the general meeting shall appoint a Director based on nomination (in Dutch: *bindende voordracht*). Paragraph two of the article provides that the general meeting may at all times overrule the binding effect of such nomination by means of a resolution passed with two-thirds majority that represent more than half of the issued share capital.

5% for the agenda right. For example, the Netherlands currently uses a threshold of 3% of the share capital having used a threshold of 1% in the past.[120] Belgium and Ireland also require a capital stake of 3%, ex article 533ter WvV and section 1104 Irish CA 2014, respectively. In Austria only a 1% capital stake is required ex section 110 Austrian AtkG. Other Member States such as France (article L.225-105 FCC), Germany (section 122(2) AktG), and UK (section 338 CA 2006) use a threshold of 5%, but Germany and France require 5% of the share capital and the UK of the total voting rights. Section 338(3)(b) UK CA 2006 also allows 'at least 100 members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least £100' to put a resolution on the agenda. This latter option is likely to entail collective action problem (*cf. infra*, chapter 5 of this research). In Germany, this is a shareholder or a group of shareholders that 'represent an amount of the share capital corresponding to 500,000 euros' in accordance with section 122(2) AktG.

Article 6 of the Shareholder Rights Directive states that Member States can allow shareholders to add items only to AGM agendas. Where this is the case, shareholders have the right to call a general meeting which is not an AGM that contains at least the items that are requested by these shareholders. In the Netherlands, shareholders can add items to AGMs and other general meetings, and the threshold for calling a meeting is set at 10% of the share capital pursuant to article 2:110 DCC. In France, Austria, Germany, Ireland and the UK this threshold is 5% ex article L.225-103(2) FCC, section 115(3) Austrian AktG, section 122(1) AktG, section 1101 Irish CA 2014 and section 303 CA 2006, respectively (in the UK, this is 5% 'of such of the paid-up capital of the company as carries the right of voting'). In contrast, in Belgium one-fifth of the share capital is needed to call a general meeting ex article 532 WvV.

Other restrictions to shareholder proposals in Europe only hold in exceptional cases. For instance, in the UK only shareholder proposals that are either a) ineffective when passed (whether by reason of inconsistency with any enactment or the company's constitution or otherwise), b) defamatory of any person, or c) frivolous or vexatious cannot be added to the meeting agendas pursuant to section 338(2) UK CA 2006. Moreover, in Germany, any shareholder has the right to file a counter motion to a proposal of the management board and supervisory board ex paragraph 126 AktG. Also, according to paragraph 127 AktG, the right to file a counter motion shall apply analogously to a nomination by a shareholder for the election of a member of the supervisory board or to external auditors.[121]

5.2. The Agenda of the AGM

In section 2 of this research we already have seen that the content of AGM agendas is not harmonized at the European level, except for capital resolutions and merger approval (but also only to some extent). In this section we consider the national framework of shareholder decision-making rights. We discuss director elections, say on pay resolutions, capital resolutions, amendments to the articles of association and other voting items in the next sections.

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[120] the Netherlands increased its threshold to 3% due to activist shareholder behaviour such as in the ABN Amro case where the activist shareholder the Children's Investment Fund Management (TCI) acquired only 1% of the share capital of ABN Amro and requested a split-up of the banking group.

[121] Shareholders also have the right to file countermotions in Austria.

5.2.1. Corporate Elections

Some rules regarding corporate elections are harmonized at the European level. For instance, article 39 of Directive 2014/56/EU, amending Directive 2006/43/EC (Audit Directive) requires that the audit committee consist of a majority of independent directors. However, a large majority of the provisions are country-specific. Rules on independent directors in European Member States are usually not of statutory nature but are established in corporate governance codes. For example, the Austrian Corporate Governance Code (provision IV.54) states that if companies have a free float of more than 20%, the members of the supervisory board (elected by the AGM or delegated in accordance with the articles of association) shall include at least one independent member who is not a shareholder with a stake of more than 10% or who represents such a shareholder's interests. And, in the case of companies with a free float of over 50%, at least two members of the supervisory board need to meet these criteria. In contrast, the German Corporate Governance Code (Kodex, hereinafter: GCGC) states that the supervisory board shall include what it considers an adequate number of independent members (following provision 5.4.2.) And, in the Netherlands, provision III.2.1. of the Dutch Corporate Governance Code 2008 (hereinafter: DCGC 2008[122] [123]) stipulates that '[a]ll supervisory board members, with the exception of not more than one person, shall be independent'. In the UK Corporate Governance Code (hereinafter: UKCGC) rule E.1.2 requires that, except for companies below the FTSE-350[124], at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent.[125] In France, too, the independent directors should account for half the members of the board, but in controlled companies the sharer falls to a third (AFEP/MEDEF Corporate Governance Code[126], rule 9.2, hereinafter: FCGC). Controlled companies are defined in article L.233-3 FCC. Section II of this article states that control is presumed when holding more than 40% of the voting rights and no other partner or shareholder directly or indirectly holds a larger fraction. Lastly, in Belgium, the Belgian Corporate Governance Code (hereinafter: BCGC) states that the majority of the nomination committee (rule 5.3./1) and the remuneration committee (5.4./1) also needs to be independent.

These rules in the national corporate governance codes already show large differences. For instance, the previously mentioned Dutch, German and Austrian corporate governance provisions (generally)[127] concern supervisory board members, whereas the provisions in the other countries

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[122] A version of the DCGC was introduced in December 2016. This research mainly refers to DCGC 2008 as this version was still applicable during our research period in the next chapters, but we provide references to the provisions in DCGC 2016.

[123] The independency requirements for supervisory board members were somewhat amended in new provisions 2.1.7 and 2.1.8 of the DCGC 2016. For example, the independency requirements are split, and only at least half of the supervisory board members is now not allowed to have a stake of at least 10% of the share capital in the company.

[124] These 'smaller companies' should have at least two independent non-executive directors.

[125] The Irish Stock Exchange recognizes the UKCGC. Irish listed companies thus follow the UKCGC on a comply-or-explain basis.

[126] One must note that the FCC provides the opportunity to follow the MiddleNext Code (instead of the AFEP-MEDEF) that targets small- and midcap companies. Since our research focuses on CAC-40 companies, and most other companies also follow the AFEP-MEDEF code, this code is less relevant for our purposes. However, the rules (for example regarding remuneration) differ between these corporate governance codes.

[127] Paragraph 15 of the preamble of the DCGC (2008) states that '[t]he Code is based on the system in which a separate supervisory board exists alongside the management board, whether under the statutory two-tier

mention directors. Hence, to explore the rights of shareholders to appoint directors, we first need to make a distinction among the Member States in our sample that require a two-tier board system and the ones that require a one-tier board system. Germany and Austria have a two-tier board system, including the *Vorstand* (the management board), and the *Aufsichtsrat* (the supervisory board). Dutch listed companies typically also have a two-tier board structure that consists of the *Raad van Bestuur* (management board) and the *Raad van Commissarissen* (supervisory board). Until recently, the two-tier board structure was mandatory for NVs classified as 'large' corporations under the so-called Dutch *structuurregeling* (structure regime)[128]. With the introduction of the *Wet bestuur en toezicht* (Board and Governance Act)[129], which went into effect on January 1, 2013, Dutch companies may now determine in their articles of association whether they follow a one-tier or a two-tier board structure.[130]

Companies in the UK, Ireland, Belgium and France usually follow a one-tier board system. In the UK, Ireland and Belgium this structure is required by law.[131] In Belgium, the WvV also allows for a "mixed board structure" (following Gerner-Beuerle, Paech and Schuster, 2013, p. 4). The articles of association may determine that the board of directors transfer some of its power to a *directiecomité* (*afdeling* Ibis, article 524bis and 524ter WvV).[132] This direction committee may comprise directors and non-directors. French law allows for a one-tier board or a two-tier board system, so like in the Netherlands it allows companies to choose their structure[133] A majority of the French companies follows the default rule and have a one-tier board structure.[134]

In a one-tier board system, usually all directors (executive and non-executive directors) are elected (and dismissed) by the general meeting. In the UK the appointment of directors is stipulated in the articles of association, which typically grant this right to the general meeting as an ordinary resolution (Davies, 2013, p. 744; Mayson, French and Ryan, 2016, p. 439). The CA 2006 requires the first directors to be appointed by a statement signed by, or on behalf of, the subscribers of the

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rules (*structuurregime*) or otherwise. Chapter III.8 contains several specific provisions for companies that have a one-tier structure.' In provision III.8.4 says that the majority of the members of the management board shall be non-executive directors and independent. In the new DCGC 2016, the one-tier board structure is more extensively outlined in the new chapter 5.

128 A corporation is considered large if it meets the size criteria are stipulated in article 2:153(2) DCC.

129 *Wet van 6 juni 2011 tot wijziging van boek 2 van het Burgerlijk Wetboek in verband met de aanpassing van regels over bestuur en toezicht in naamloze en besloten vennootschappen. Staatsblad* 2011, 265.

130 The legal foundation for the Dutch NV is article 2:129a DCC; article 2:239a DCC articulates the legal foundation for Dutch BVs. Large companies that adopted a mandatory two-tier board structure in accordance with the *structuurregeling* are now also allowed to choose between these two board structures ex article 2:164a DCC.

131 Actually, in the UK, the CA 2006 remains silent about the board system. However, UK companies operate with a one-tier board system, and this is also the system that the CA 2006 assumes to be in place. Following Davies, 2013:723.

132 In particular, article 524bis(1) WvV stipulates that *'[d]e statuten kunnen de raad van bestuur toestaan zijn bestuursbevoegdheden over te dragen aan een directiecomité, zonder dat deze overdracht betrekking kan hebben op het algemeen beleid van de vennootschap of op alle handelingen die op grond van andere bepalingen van de wet aan de raad van bestuur zijn voorbehouden. Wanneer een directiecomité wordt ingesteld is de raad van bestuur belast met het toezicht op dat comité.*' Despite the mixed board structure there is some convergence towards the two-tier board structure, as the board has the duty to monitor this direction committee.

133 Article L.225-57 FCC states that the memorandum and articles of association of public companies may stipulate that they shall be governed by the provisions of the subsection on the two-tier board structure (L.225-57 to L.225-90-1). The default rule is the one-tier board structure. See also Hansmann & Kraakman (2009), p. 21.

134 Dorresteijn, et al. (2009), p. 162.

memorandum (sections 9(4)(c), 12(1)(a) and 12(2)(a) of the CA 2006). In the absence of any provision in the articles of association, the directors are appointed by the 'members' of the company.[135] The UKCGC requires FTSE-350 to re-elect their directors every year.[136] Section 168 CA 2006 stipulates that the general meeting can remove any director at any time by ordinary resolution without providing any reason in the UK, as well as in cases when the(se) director(s) are not appointed by the shareholders (Davies, 2013, p. 745). The UKCGC adds that '[n]on-executive directors should be appointed for specified terms subject to re-election and to statutory provisions relating to the removal of a director. Any term beyond 6 years for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board' (provision B.2.3). Following new Listing Rules (introduced in May 2014), LR 9.2.2AR jo 9.2.2ER, independent shareholders may vote separately on the election of independent directors in companies that have a controlling shareholder in the UK. The threshold for control is set at 30% and includes acting in concert. If the resolution is not approved, the company may propose a further resolution to elect or re-elect the proposed independent director. This proposal can only be voted on in the 30 days from the end of the waiting period of 90 days. This second resolution must be approved by the shareholders of the company ex LR 9.2.2FR.

In Ireland, the appointment of directors is also stipulated in the articles of association. Section 144 (3)(a) Irish CA 2014 sets the default rule that directors are appointed by the general meeting.[137] However, since the Listing Rules of the Irish Stock Exchange (ISE) require that Irish incorporated listed companies on the Main Securities Market comply to the UKCGC on a comply or explain basis[138], Irish listed companies will also usually put their directors up for (re-)election by the AGM every year. Section 146 Irish CA 2014 stipulates that directors can be removed by the general meeting by ordinary resolution. This decision also requires no justification and can be made at any time.

In Belgium, directors are also appointed and dismissed by the AGM under a simple majority rule. In accordance with article 518(3) WvV, the maximum term is six years, but the BCGC reduces this term to 4 years (principle 4.6). Article 518(3) WvV also stipulates that directors can be removed at any time by the AGM without reason. And in France, the appointment right for a one-tier board structure is stipulated in article L.225-18 FCC: this article states that this resolution is adopted at the ordinary general meeting, and hence, requires a normal majority. The maximum term of office is 6 years in accordance with article L.225-18 FCC, but provision 14 of the FCGC requires a

135 Case law: Woolf v East Nigel Gold Mining Co Ltd (1905) 21 TLR 600; Harman v Energy Research Group Australia Ltd (1986) WAR 123. Following Mayson, French & Ryan (2016) p. 439.

136 Provision B.7.1. states that: '[a]ll directors of FTSE 350 companies should be subject to annual election by shareholders. All other directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. Non-executive directors who have served longer than nine years should be subject to annual re-election.'

137 Section 144(3)(a) holds that: 'subsequent directors of a company may be appointed by the members in general meeting, provided that no person other than a director retiring at the meeting shall, save where recommended by the directors, be eligible for election to the office of director at any general meeting unless the requirements of subsection (4) as to his or her eligibility for that purpose have been complied with'.

138 The Irish CGA states that the ISE recognizes that this Code has 'set the standard for corporate governance internationally' (p. 1 of Appendix 4).

maximum term of four years.[139] Article L.225-18 further specifies that the ordinary general meeting can dismiss the directors at any time (without reason).

In contrast, in a two-tier board structure, the supervisory board is usually appointed by the AGM and has the legal duty to appoint, to supervise and to remove members of the management board. In France, the two-tier board structure provisions are stipulated in article L.225-57 FCC *et seq*. Article L.225-59 FCC requires that the supervisory board members appoint the management board members. In accordance with L.225-61, the AGM may dismiss the management board members. Article 225-27 FCC stipulates that the bylaws may provide that up to four directors (five for non-listed companies) be elected by employees, as long as this number does not exceed one-third of the other directors (one-tier board structure). Article L.225-79 FCC requires this for a two-tier board structure (also see Pietrancosta, Dubois and Garcon, 2013, p. 225). Moreover, article L.225-23 FCC (one-tier board structure) and L.225-71 FCC (two-tier board structure) require that in listed companies, employee shareholders who hold more than 3% of the share capital have the right to appoint one or more directors among them (following Pietrancosta, Dubois and Garcon, 2013, p. 187).[140]

In Germany, the AGM has the right to partly elect the members of the *Aufsichsrat*. The other members of the Aufsichsrat are elected by employees under the German co-determination (*mitbestimmung*) regulations. Paragraph 7 of the *Mitbestimmungsgesetz* requires that in large companies (more than 2,000 employees) a supervisory board consists of an even number of members of which half are elected from among employee representatives.[141] The chairman of the supervisory board is (usually) a shareholder representative,[142] providing the shareholders with decisive power via a tie-breaking vote. In companies with 500 to 2,000 employees, one third of the members are elected from among employee representatives. The right to remove supervisory board members is stipulated in section 103(1) AktG: only those supervisory board members appointed by the AGM may be removed at any time by the AGM. This requires a special majority of 75% (although the articles of association may set another higher majority and additional requirements). The term of office for management and supervisory board members may not exceed 5 years: for management board members this limitation is stipulated in section 84(1) AktG. For supervisory board members, there is no explicit term stated in the AktG, but section 102 AktG stipulates that '[t]he members

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[139] Paragraph 1 of provision 14 affirms that: '[w]ithout affecting the duration of current terms, the duration of directors' terms of office, set by the by-laws ('statuts')13, should not exceed a maximum of four years, so that the shareholders are called to express themselves through elections with sufficient frequency.'

[140] Companies that have stipulated in their articles of association that one or more directors be elected by employees ex L.225-27 or L.225-79 FCC are excluded from this requirement.

[141] Section 7 of the *Mitbestimmungsgesetz* requires that companies with less than 10,000 employees have a supervisory board with six shareholder representatives and six employee representatives. For companies with more than 10,000 employees but less than 20,000 the supervisory board should consist of eight shareholder representatives and eight employee representatives and for companies with more than 20,000 employees this amount is ten (twenty supervisory board members in total). As a result of the Codetermination regime, corporate boards in Germany are usually larger than in other companies. One may for example refer to the table presented by Hansmann and Kraakman (2009, p. 70). The authors find that whereas many boards have more than 20 board members in Germany, in the US, UK, France and Italy this number is substantially lower (around eleven members).

[142] Following Cahn and Donald (2010, p. 310). The authors write that the chairman is elected by two thirds of the supervisory board in the first round. Since the required two-thirds majority is often not reached, a second round is usually held. During this second round the shareholder representatives elect the chairman by simple majority voting. The employee representatives elect a deputy chairman.

of the supervisory board may not be appointed for a period of time extending beyond the adjournment of the shareholders' meeting resolving on ratification of the acts of management for the fourth fiscal year following the commencement of their respective term of office. The fiscal year in which such term of office commences shall not be taken into account'[143]. Legal scholars generally argue that this term also holds for re-appointments of supervisory board members (Roth, 2013, p. 319). The GCGC states in provision 5.4.4. that the members of the management board may not become supervisory board members of the company within two years after the end of their appointment, unless they are appointed upon a motion presented by shareholders holding more than 25% of the voting rights in the company.

Section 87(1) of the Austrian AktG stipulates that the members of the supervisory board are elected by the AGM. However, employee representatives make up one-third of the supervisory board in Austria ex section 110 ArbVG (the *Gesamte Rechtsvorschrift für Arbeitsverfassungsgesetz*). The maximum term of office for management board members is 5 years ex section 75 Austrian AktG. For the supervisory board members a similar provision as in section 102 AktG (Germany) applies to their term of office ex section 87(7) Austrian AktG.[144] In accordance with section 87(8) AktG the AGM may remove the members of the supervisory board at any time: for this a majority of at least three fourths of the votes is required. Here too, the articles of association may replace this majority by another (higher) threshold and establish other requirements.

In the Netherlands, the members of the management board and the supervisory board are elected by the AGM ex articles 2:132 jo 2:134 DCC and 2:142 jo 2:144 DCC. However, the supervisory board has the authority to (re-)elect and dismiss members of the management board under the *structuurregeling* ex article 2:162 DCC (two-tier) and 2:164a DCC (one-tier)[145].[146] Furthermore, the employees' council[147] has, in companies 'with labour-codetermination'[148], the binding right to nominate one-third of the members of the supervisory board. The AGM has the right to remove the directors that are appointed by the AGM at any time and without reason ex article 2:134(1) DCC, but one may note that all resolutions must be in accordance with a standard of reasonableness and fairness ex article 2:15(1) DCC (following Nowak, 2013, p. 471). Article 2:134(2) DCC stipulates that if the articles of association stipulate a qualified majority for the removal of directors, this majority may not exceed two thirds of the votes cast which represent

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143 The wordings are taken from <http://www.nortonrosefulbright.com/files/german-stock-corporation-act-109100.pdf>. (accessed in June 2015).

144 This provision holds: '(7) *Kein Aufsichtsratsmitglied kann für längere Zeit als bis zur Beendigung der Hauptversammlung gewählt werden, die über die Entlastung für das vierte Geschäftsjahr nach der Wahl beschließt; hiebei wird das Geschäftsjahr, in dem das Aufsichtsratsmitglied gewählt wurde, nicht mitgerechnet*.'

145 For a legal analysis of article 2:164a DCC, please refer to Melchers (2013).

146 Large corporations with mainly international activities are subject to a less strict version of this regime, following article 2:155(1) Dutch Civil Code. Under this regime, the shareholders' meeting retains the authority to (re-)elect and dismiss the members of the management board.

147 Companies that employ at least fifty employees must establish an employees' council. This council is composed of employees' representatives. The number of representatives lies between 3 and 25, depending on the total number of employees. Article 6 of the *Wet op de Ondernemingsraden van 28 januari 1971* [Law of 28 January 1971 on the Employees Council], *Staatsblad* 1971, p. 1.

148 This wording is taken from Nowak (2013), p. 475. It should be noted that the Dutch approach of labour codetermination is less far reaching than the German codetermination system. In the Netherlands, companies which must comply with the co-determination rules must provide the employees' council with the right to nominate one third of the supervisory board. Next, the supervisory board provides the binding nomination of its own members. The general meeting elects the members but can also reject the nominated supervisory board members, which initiates a specific procedure (article 2:158(9) DCC).

more than half of the share capital. The maximum term of office is four years with no limit for re-election.

The analysis above shows that there are large differences in shareholder decision-making rights regarding board elections that one needs to consider in an empirical comparative framework (the next chapters in this research). We provide an overview of director (re-)elections for the seven Member States in table 4:

TABLE 4

Director elections

Voting items: Director elections	**Austria**	**Belgium**	**France**	**Germany**	**Ireland**	**Netherlands**	**UK**
Board structure?	Two-tier	One-tier	Both (one-tier most common)	Two-tier	One-tier	Both (two-tier most common)	One-tier
(Re-)election right?	Supervisory board members	Directors	Directors or supervisory board members (one-tier most common)	Supervisory board members	Directors	Supervisory board members or directors (two-tier most common)	Directors
Needed majority for appointment?	50% + 1	50% + 1	50% + 1	50% + 1	50% + 1	50% + 1	50% + 1
Needed majority for dismissal?	75% (only supervisory board members, those appointed by AGM)	50% + 1	50% + 1	75% (only supervisory board members, those appointed by AGM)	50% + 1	50% + 1 (those appointed by the AGM)	50% + 1
Term of office?	5 years	4 years	4 years	5 years	Every year up for re-election	4 years	Every year up for re-election
Employee involvement?	Yes	No[149]	Yes	Yes	No	Yes, but only binding nomination of one-third	No

[149] With the exception of some state-controlled companies.

5.2.2. Say-on-pay Resolutions

Executive remuneration is a quintessential topic in corporate governance that is a subject of extensive debate. Executive remuneration packages consist of several components, usually including; i) fixed pay or salary that is usually defined as a fixed amount of cash; ii) short-run and long-term variable pay in cash, shares, and/or options on shares; iii) retirement plans; iv) severance pay; v) loans, guarantees, and other grants;[150] and vi) other benefits or 'perquisites' (Cahn and Donald, 2010, p. 418). Since this section of the study concerns shareholder decision-making rights, and shareholders do not have a say on all aspects of the remuneration packages in all Member States, we only focus in the next sections on shareholder approval rights about pay matters.

Executive pay is usually associated with incentive pay. In the introduction chapter, we have considered the principal-agent relationship between directors and shareholders. The central question in these relationships is how to motivate the agent to perform in the interest of the principal. The principal generally lacks information about the agent's performance (moral hazard problem) and monitoring is considered costly. Incentive pay is one of the mechanisms that can be used to induce the agent to act in the interest of the principal. For example, consider the simple model introduced by Sappington (1991, pp. 46-47): there is a principal and an agent, and both parties are risk neutral. These two parties share the same beliefs about the critical random productivity parameter that Sappington denotes by θ (Sappington mentions as an example the amount of rainfall). The agent's effort is denoted by e, and both the agent's efforts e and θ affect the level of expected performance. Next we have the realised performance that is denoted by X. Sappington assumes that the agent can observe θ before he determines how much efforts he exerts. The principal however, cannot observe the level of effort nor the realization of θ. The principal's valuation of the performance level X is noted by $V(X)$, an increasing function of X with diminishing returns. In this game, first, the principal determines the payments P that the agent will receive, depending on the observed performance X. Then, the agent accepts or rejects the contract. Sappington assumes that if the agent rejects, there will not be another offer ('take-it-or-leave-it'). The agent will only accept the contract when the expected utility of accepting the contract exceeds his opportunity costs, denoted by $\overline{U}$. This reservation level is presumed to be known by both parties. Sappington argues that the solution to this game is a simple contract that provides the agent with payment P that is equal to the principal's valuation of the performance of the agent minus the fixed constant k: $P(X) = V(X) - k$. Sappington argues that the constant k can be considered as a franchise fee that is paid by the agent to work for the principal. This fee equals the expected total surplus from efficient operation, i.e., the efficient level of effort $e^*(\theta)$. In this example, the level of effort maximizes the expected surplus, which can be defined as the difference between the expected value of the agent's performance and the cost of effort, including opportunity cost $\overline{U}$. In Sappington's example, the agent has become the residual claimant, acting as if he were the principal.

The message derived from this simple model is clear: without information problems,[151] *well-designed* incentive payments can be used to align the interests of the parties in a principal-agent relationship. However, in practice there are information asymmetries and the principal actually

[150] Words are partly taken from Van der Laan et al. (2010). Following Van der Elst and Lafarre (2015, p. 230).

[151] In this simple situation, the principal would never have to pay to obtain information about the working environment or the magnitude of the agent's efforts (Sappington, 1991).

benefits from an increased ability in monitoring and disclosure.[152] Sappington demonstrates this reality in his paper using some extensions of the aforementioned model.

Practice shows that badly designed incentive pay and lack of good monitoring can result in undesirable situations. As Van der Elst and Lafarre (2015) describe, there has been a lot of criticism of performance-linked compensation systems. Executive pay is often considered excessive and the gap between executive pay and employee earnings continues to grow (for instance, one may refer to Fleming and O'Connor, 2015, following Van der Elst and Lafarre, 2015). For instance, Bebchuk and Fried have complained about overpaid executives 'without performance' (Bebchuk and Fried, 2004). The authors argue that in practice performance-linked compensation is not in line with the arm's-length contracting model and the role of 'managerial power' in the compensation setting process needs to be considered. According to many, particularly in the financial sector, performance-linked pay has actually worsened the agency problem, leading to short-term incentives and excessive risk-loving behaviour (for instance, see Ferrarini and Ungureanu, 2014). For many years this discussion took place in the UK and the US. However, during the last decade continental Europe, including the Netherlands, experienced increasing executive pay and larger social opposition as well. In the Netherlands, the discussion of the share bonus and severance pay package of Rijkman Groenink, former CEO of ABN Amro, at the end of 2007 was especially fierce (Smit, 2008). The discussion of (how to structure) executive pay has involved not only shareholders, politicians and academics, but also the media, which has drawn significant attention to high levels of executive pay for so-called 'fat cats',[153] thereby turning this discussion into a social one.[154]

Many countries introduced new disclosure requirements as well as some form of say on pay in recent years to strengthen executive compensation as a corporate governance mechanism. These say-on-pay regulations vary widely across the world, and within Europe, too.[155] As we have seen in the previous sections of this research, the EC has proposed a European say on pay that includes a say on the remuneration policy every three years and the yearly approval of the remuneration report. These and other proposed amendments to the Shareholder Rights Directive have not yet been implemented.

To structure the large variety of say on pay decision-making rights and to be able to compare them, we divide the say on pay resolutions into different categories. First, we distinguish resolutions

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[152] Another example of a principal-agent problem and the effect of variable pay is the following (Fan, 2013, p. 27): principal *Y* wants to sell a particular good, for example a car. He hires car dealer *X* to do this. We assume that dealer *X* has extensive experience in selling cars and is definitely more experienced than principal *Y*. Car dealer *X* knows that, if he spends a little bit more time, there will always be a buyer willing to pay more. For example, at $t = 1$ he will be able to sell the car for 1,000€ and at $t = 2$ for 1,200€. Furthermore, assume that the car dealer incurs 50€ of costs every period *t* (e.g., effort to find a buyer, stalling costs etc.). If the principal pays the car dealer a fixed fee of, say, 100€, the car dealer will always sell the car at the lower price in the first period. However, given variable pay, for instance a fixed fee of 100€, plus an extra amount of 100€ if the car is sold for a price higher than 1,000€, you may perhaps conclude that the car dealer may be incentivized to sell the car in the second period: after all, selling the car in the second period would provide him with an extra gain of 50€. However, with private information in the market for second-hand cars and without proper monitoring of the principal, the car dealer will be better off buying the car in period one and selling it to another buyer in the second (which violates the fiduciary duty, i.e., the duty of loyalty).

[153] The term 'fat cat' is often used in the press. One may refer to the article in *The Economist* (2003). This article starts with the sentence: '*NOTHING* in business excites so much interest in the wider world as the pay of top executives'.

[154] This text was partly taken from Lafarre and Van der Elst (2015).

[155] Thomas and Van der Elst (2015).

concerning the remuneration report (*ex post* say on pay). Other resolutions may include the approval of (amendments to) the remuneration policy, approval of incentive schemes and share (option) grants, (non-)executive and supervisory board remuneration, and related party transactions. These resolutions merely involve *ex ante* say on pay rights. One may note that not only the content of the say on pay right may differ, but also its nature. Some forms of say on pay are binding and thus have legal consequences, whereas others are non-binding. Besides, some say on pay rights are mandatory, whereas other forms of say on pay are not. An example of a non-mandatory say on pay right is the shareholder approval on the remuneration system in Germany, as the German AktG stipulates that shareholders can have a vote, which we will discuss – together with other say on pay rules – discuss in the following sections. Besides these forms of rules, one may also find say on pay provisions in, for instance, the national corporate governance codes.

5.2.2.1. Remuneration Report

As of 2003 in the UK and 2012 in Belgium, shareholders have a mandatory, but *non-binding* vote on the remuneration report ex section 422 CA 2006 and article 96(3) jo article 554 WvV,[156] respectively. The Irish CA and the Listing Rules of the Irish Stock Exchange do not require such a say-on-pay right. However, many Irish companies nowadays put the remuneration report to a shareholders' vote. In 2009, Manifest, a European proxy voting agency, requested an *ex post* say on pay at several Irish companies, including Bank of Ireland Plc, DCC Plc, C&C Group Plc and Independent News & Media Plc (Manifest, 2009). Accordingly, these four companies have put their remuneration report to a shareholders' vote ever since. In the Netherlands, France, Germany and Austria shareholders have no legal right to a say on pay regarding the remuneration report (yet). Moreover, companies usually do not provide this right to their shareholders in practice.

5.2.2.2. Remuneration Policy

To date, only the Netherlands and the UK have a shareholder say on the remuneration policy that (somewhat) resembles the proposed article 9a(1) of the Shareholder Rights Directive. In the Netherlands, article 2:135(1) DCC stipulates that the general meeting is the only corporate body that can adopt the remuneration policy. Although the law remains silent on this issue, it is assumed that the AGM must adopt any amendments to the remuneration policy (Van der Elst and Lafarre,

[156] The second paragraph of article 554 WvV was implemented at 3 May 2010 with the act W 2010-04-06/21 (article 9) and states (in Dutch): '*Eveneens beslist de algemene vergadering van de vennootschap waarvan de aandelen zijn toegelaten tot de verhandeling op een in artikel 4 bedoelde markt, bij afzonderlijke stemming, over het remuneratieverslag.*' This article also stipulates a shareholders' say if the severance pay in the executive service contract of an executive director (or the daily manager) is higher than twelve months fixed pay (or when motivated by the remuneration committee higher than eighteen months fixed pay): *'Indien een overeenkomst met een uitvoerend bestuurder, een lid van het directiecomité, een andere leider bedoeld in artikel 96, § 3, laatste lid, of een persoon belast met het dagelijks bestuur van een vennootschap waarvan de aandelen zijn toegelaten tot de verhandeling op een in artikel 4 bedoelde markt voorziet in een vertrekvergoeding die hoger is dan 12 maanden loon of, op gemotiveerd advies van het remuneratiecomité, hoger dan 18 maanden loon, moet die afwijkende bepaling over de vertrekvergoeding vooraf worden goedgekeurd door de eerstvolgende gewone algemene vergadering. Elk hiermee strijdig beding is van rechtswege nietig.*'

2015, 2017).[157] [158] The remuneration policy must include the elements as described in articles 2:383c DCC up to and including article 2:383e DCC to the extent that these concern the board of directors. These elements include "all aspects of remuneration"[159]. In the UK, companies need to put the remuneration policy to a shareholders' vote as of 2013.[160] This rule was introduced in section 439A UK CA 2006.[161] In contrast to the Netherlands, approval is required every three years, including cases where the remuneration policy is not amended. Van der Elst and Lafarre (2017) show that the Dutch approach spontaneously results in a vote at least every three years in many companies,[162] but also allows other companies to keep a satisfying compensation policy for a longer period: these companies would face unnecessary extra costs if the remuneration policy required, for example, a triennial approval, as in the UK (and the proposal for the European say on pay, *cf. supra*, section 2.5).

In Germany, shareholders can have a say regarding the remuneration system.[163] Tröger and Walz (2014) state that this say on pay 'pertains only to the general compensation scheme and attaches practically no legal sanctions to the vote'[164]. Section 120(4) AktG states that '*[d]er Beschluss begründet weder Rechte noch Pflichten*'. Hence, this German say on pay is *non-binding* and *non-mandatory*. There is some discussion whether shareholders' approval of the remuneration system can be seen as an *ex post* or *ex ante* say on pay resolution and what it actually entails.[165] It seems that the Germany

[157] Derived from *Kamerstukken* II (2009-2010), 31877, nr.5 (*Nota naar aanleiding van het verslag*), p. 25. One may also refer to *Kamerstukken* II (2009-2010), 31877, no. 3, p. 9. In an early parliamentary document about the introduction of say on pay legislation, the Dutch legislature proposed that the general meeting adopt 'the general lines of the remuneration policy'; later in the parliamentary discussion this was changed into 'the remuneration policy'. Hence, under the current article 2:135(1) DCC the general meeting does not just adopt the general outline of the remuneration policy but the full remuneration policy.

[158] Article 2:135 DCC does not address the consequences in case the individual remuneration package is in breach of the remuneration policy. According to some Dutch legal scholars a decision that is not accordance with the remuneration policy should be void ex article 2:14(1) DCC. For example, one may refer to Huizink, *GS Rechtspersonen,* article 2:135 DCC, no. 6.3. Also see Meijer-Wagenaar (2006). Conversely, others argue that it is possible to deviate from the remuneration policy if the decision is based on convincing arguments (i.e., Van Slooten & Zaal, 2008). Nonetheless, in practice the remuneration policy is often broadly formulated, making it unlikely that individual remuneration contravenes the remuneration policy.

[159] This includes fixed pay, annual bonuses, shares, options on shares, executive loans, severance pay, and other elements that may be part of executive remuneration (following *Kamerstukken* II (2002-2003), 28179, no. 41.

[160] More specifically, UK companies should put the remuneration policy to a shareholders' vote at the AGM held in the first financial year that commences on or after 1 October, 2013.

[161] 'Quoted companies: members' approval of directors' remuneration policy' under the Enterprise and Regulatory Reform Act 2013, section 79.

[162] The authors find that for a sample of Dutch listed AEX-25 and AMX-25 companies in the period of 2004-2014, shareholders are invited to approve (the amendments to) the remuneration policy on average 3.5 times during an average period of 9.1 years.

[163] Section 120(4) AktG. This paragraph states that the general meeting of shareholders may (*kann*) decide on the remuneration system of the management board members.

[164] Tröger and Walz (2014), p. 2. The authors explain that this resolution on the remuneration system does not entail any rights or obligations and the obligations of the supervisory board pursuant to section 87 AktG shall remain unaffected. Moreover, the resolution shall not be voidable pursuant to section 243 AktG.

[165] Vesper-Gräske (2013), pp. 770-771. According to this author, the remuneration system includes 'the principles of various payment components that constitute the overall remuneration package and their relation to each other' including fixed and variable pay and performance criteria.

say on pay is comparable to shareholders' say on the remuneration policy in other Member States.[166] For example, one may refer to the 2012 AGM of SAP AG that states in its agenda of the meeting: 'the previous system of Executive Board compensation was replaced as of January 1, 2012, by a new, more competitive compensation system that places greater focus on the achievement of strategic objectives. This new compensation system is to be presented to the General Meeting of Shareholders for approval in accordance with section 120(4) AktG'.[167] Although one may argue that this German say on pay entails some aspects of an ex post shareholder decision-making right,[168] given the previous statements we consider the German shareholder approval of the remuneration system to be an ex ante say on pay that is practically comparable to a non-mandatory and non-binding say on the remuneration policy.

During the empirical research period 2010-2014 that we use in the subsequent chapters, shareholders had no legally required say on the remuneration policy in France. However, because of a new version of the FCGC (January 2014), shareholders may be able to annually vote on the individual remuneration of the company's executive officers ex provision 24.3 FCGC as from the 2014 AGMs.[169] This vote is non-binding, however. When the AGM 'issues a negative opinion' (i.e., a majority of the shareholders votes against such a proposal), the corporate board must discuss this matter at one of the next meetings (advised by the remuneration committee), and immediately publish on the company's website a notice detailing how it intends to deal with the expressed opinion of the AGM (provision 24.3). In 2016, new legislation on say on pay was proposed (called *Loi Sapin-2*, for example, see GlassLewis, 2016). French National Assembly adopted this bill that contained an annual mandatory and binding vote on the pay packages of chief executive directors on 14 June 2016, and on 8 December 2016 *Le Conseil Constitutionnel* declared the bill in conformity with the French constitution. One may note that few weeks before the adoption of the bill by the National Assembly, shareholders rejected the Renault CEO's pay package at the 2016 AGM. The

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166 One may also refer to Powell and Rapp (2015, p. 5) who state that '[d]ifferences are reflected in the substance of the vote, i.e. individual compensation packages vs. the compensation of the board or the matter put to vote (*the compensation reports as opposed to the compensation system*)' (p. 5, emphasis added).

167 SAP AG, Invitation to the 25th Annual General Meeting of Shareholders Wednesday, 23 May 2012, p. 7.
(<http://www.sap.com/corporate-en/about/investors/governance/meetings.html>). (accessed in March 2015). Another random example of a resolution regarding the remuneration system was put on Adidas's 2012 AGM agenda. Adidas provided the following information: '[t]he Annual General Meeting held on May 6, 2010 approved the compensation system for the members of the Executive Board which formed the basis for the determination of the Executive Board compensation for the financial years 2009 to 2011. Since the Long Term Incentive Plan 2009/2011, the LTIP 2009/2011 expired on December 31, 2011, the supervisory board resolved upon a compensation plan with a long-term incentive effect covering the years 2012 to 2014 and with new criteria and targets, the LTIP 2012/2014, at its meeting on March 6, 2012. It is thus intended to make use of the possibility of a resolution of the Annual General Meeting on the compensation system for the members of the Executive Board as set out in § 120 section 4 German Stock Corporation Act (Aktiengesetz – AktG)' (p. 2). Adidas AG, 2012 AGM Agenda Annual General Meeting (<http://www.adidas-group.com/media/filer_public/2013/07/31/einlad_2012_en.pdf>). (accessed in March 2015).

168 For example, see Vesper-Gräske (2013), pp. 770-771. Also note that the Adidas compensation system was approved in 2010, but formed the basis for the determination of compensation in financial year 2009 as well (*cf. supra*, nt. 167).

169 Provision 24.3 states that '[i]t is recommended that at the shareholders' vote, one resolution is presented for the Chief Executive Officer or the Chairman of the Management Board and one resolution for the Deputy Chief Executive Officers or for the other members of the Management Board.' One may note that the MiddleNext Code does not contain this provision.

vote, however, made when it was still advisory, was ignored by the board (Chassany, 2016). With the introduction of the new rules, shareholders nowadays have a yearly binding say-on-pay vote in France.[170]

In Belgium, Austria and Ireland there are no legal requirements for a shareholders' say on pay regarding the remuneration policy (yet). However, the remuneration report usually contains significant information regarding the remuneration policy as well. Moreover, in Belgium, shareholders have a mandatory non-binding vote on this report (*cf. supra*, section 5.2.2.1).[171]

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[170] Articles L.225-37-2 (one-tier board structure) and L.225-82-2 FCC (two-tier board structure) contain this new French binding, annually say on pay (see also Sénat, 2016). In addition, article L.225-100 FCC is amended. The first paragraph of new rule states that shareholders at least have a yearly say regarding the principles and criteria for determining and allocating the all different components of executive pay (i.e., one may note that this rule is rather similar to an *ex ante* shareholders' say on the remuneration policy). The second paragraph of the new rule states that the proposed remuneration should be presented in a detailed report that indicates that the variable and exceptional elements of the pay are conditional upon the AGM's approval. The third paragraph adds that any amendments in the remuneration (first paragraph) require shareholder approval. In case the remuneration policy is not approved (first paragraph), the previously approved will still apply. And, in case there are no agreed principles and remuneration cirteria, remuneration will be determined in accordance with executive pay awarded in the previous year or, in absence of remuneration awarded in the previous year, in accordance with existing practices in the society. The full French text of this new say-on-pay rule is the following (article L.225-37-2 (one-tier board structure) and L.225-82-2 FCC):

Dans les sociétés dont les titres sont admis aux négociations sur un marché réglementé, les principes et les critères de détermination, de répartition et d'attribution des éléments fixes, variables et exceptionnels composant la rémunération totale et les avantages de toute nature, attribuables aux président, directeurs généraux ou directeurs généraux délégués, en raison de leur mandat, font l'objet d'une résolution soumise au moins chaque année à l'approbation de l'assemblée générale des actionnaires dans les conditions prévues à l'article L. 225-98 et au deuxième à avant-dernier alinéas du présent article.

Les projets de résolution établis par le conseil d'administration en application du premier alinéa du présent article sont présentés dans un rapport joint au rapport mentionné aux articles L. 225-100 et L. 225-102. Ce rapport détaille les éléments de rémunération mentionnés au premier alinéa du présent article et précise que le versement des éléments de rémunération variables et exceptionnels est conditionné à l'approbation par une assemblée générale ordinaire des éléments de rémunération de la personne concernée dans les conditions prévues à l'article L. 225-100.

L'approbation de l'assemblée générale est requise pour toute modification des éléments mentionnés au premier alinéa du présent article et à chaque renouvellement du mandat exercé par les personnes mentionnées au même premier alinéa.

Si l'assemblée générale n'approuve pas la résolution, les principes et critères précédemment approuvés dans les conditions prévues aux trois premiers alinéas du présent article continuent de s'appliquer. En l'absence de principes et critères approuvés, la rémunération est déterminée conformément à la rémunération attribuée au titre de l'exercice précédent ou, en l'absence de rémunération attribuée au titre de l'exercice précédent, conformément aux pratiques existant au sein de la société.

Les conditions d'application du présent article sont déterminées par décret en Conseil d'Etat.

[171] In Belgium, article 91(3) WvV stipulates that the remuneration report has to contain detailed information on eleven remuneration items: '(i) the process the board used in developing the *remuneration policy*, (ii) a statement of *how the directors applied the remuneration policy* during the accounting period, (iii) the remuneration package of each individual non-executive board member, (iv) the remuneration that senior executive officers receive for their role as directors, (v) the *criteria and procedure to grant performance related pay* to executive board members and senior executive officers, (vi)a detailed description of the individual remuneration package of the chief executive officer, (vii) a detailed description of the global remuneration package of the other senior executive officers, (viii) the number and main characteristics of shares, options and other rights granted, vested and/or executed, (ix) severance pay commitments, (x) the applied severance pay in case an executive board member or senior executive officer departed, and (xi) claw back provisions for variable pay based on misleading financial information'. Cited from Thomas & Van der Elst (2015, p. 677), emphasis added by the author.

5.2.2.3. Incentive Schemes and Share Grants

In the Netherlands, contrary to the adoption of the remuneration policy as stipulated in article 135(1) DCC, the compensation package of the individual members of the management board and/or of the executive board members can be delegated to another corporate body in the articles of association ex article 2:135(4) DCC, which is usually the supervisory board.[172] Article 2:135(5) DCC requires shareholder approval on pay schemes in the form of shares and options in case the articles of association designate another body than the general meeting to determine the individual remuneration packages for executive or management board members (article 2:135(4) DCC).[173] The last phrase of article 2:135(5) DCC states that the absence of the approval of the general meeting does not affect the power of representation to grant these shares or options. In other words, the flawed approval does not hinder the legal consequences of such an award.[174]

In case the articles of association empower another body than the general meeting to determine the individual remuneration package (following article 2:135(4) DCC) then article 2:135(5) DCC conditions that the general meeting must approve pay schemes in the form of shares or options (Van der Elst and Lafarre, 2015). Dutch practice shows that within Member States say on pay resolutions may also differ substantially among companies. There is some uncertainty as to whether separate approval of the general meeting is needed for these incentive plans or whether these plans may be included in proposals to adopt (amendments to) the remuneration policy ex article 2:135(1) DCC.[175] Accordingly, Dutch companies consider the implementation of these incentive plans part of the remuneration policy while other companies use separate agenda items.[176] Dutch parliamentary history explains that article 2:135(5) DCC contains a specific requirement for schemes in the form of shares or options on shares, which further elaborates on the general provision in article 2:135(1) and article 2:135(4) DCC. Article 2:135(5) DCC requires specific approval of the general meeting for granting (special) share or option grants to (individual) board members ex article 2:135(4) DCC in accordance with the current remuneration policy. In contrast, the Dutch remuneration policy already includes 'all aspects' of executive remuneration, and consequently also plans and options on shares (Van der Elst and Lafarre, 2015, 2017).

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[172] *Kamerstukken* I (2003-2004), 28179, B, p. 15. One may also refer to the Case *Docherty/ SBM Offshore* (2011), following Assink (2013), p. 769. It is considered best practice for the supervisory board to set the individual remuneration package (Principle II.2.9.)

[173] The rationale behind this rule is, according to the Dutch legislature, that shareholders may have special interests in decisions regarding share capital changes. Granting shares and options on shares may dilute the stakes of incumbent shareholders and may change the composition of the share capital. See also Van der Elst and Lafarre (2015).

[174] According to Dutch Law, the decision to grant shares or options to directors is a direct external decision ('*direct extern werkend besluit*') ex article 2:16(2) DCC. Although the decision is void ex article 2:14(2) DCC without approval of the general meeting, the lack of approval cannot be invoked against third parties following the last phrase of article 2:135(4) DCC. Also see Van Solinge and Niewe Weme (2009).

[175] For this discussion one may also refer to Eumedion (2012).

[176] During Heineken's general meeting 2011, shareholders separately voted for i) adjustments of the remuneration policy, ii) amendments related to the short-term incentive plan, and iii) amendments related to the long-term incentive plan. In contrast, during the general meeting 2014 of KPN, shareholders could only vote for the proposal 'to approve amendments to the LTI plan and to amend the remuneration policy' (item 15). During SBM Offshore's extraordinary general meeting 2010, shareholders could vote for 'the amendment to the remuneration policy 2011' (item 2) that included amendments to both the short-term incentive plan and long-term incentive plan.

A say on the implementation of (long-term) incentive schemes is also required by the UKCGC.[177] Accordingly, Irish companies also need to put long-term incentive schemes to a shareholders' vote as well.[178] And in Belgium, shareholders have a say on variable pay pursuant to article 520ter WvV. According to this provision, Belgian companies need to put proposals to a shareholder vote if the variable part of the remuneration package is granted over a period of less than three years, if the variable part that is based on performance criteria measured over less than two years exceeds 25% of the variable remuneration, or if more than 75% of the variable remuneration is based on performance criteria measured over less than three years. However, if the articles of association allow these practices, a shareholder vote is not required.

In Germany and Austria, resolutions regarding incentive schemes that include share (option) grants to directors also require a conditional capital increase to subscribe new shares (*cf. infra*, section 5.2.3). Under French law we can find a similar requirement regarding the authorisation to grant (free) shares or share options to directors or company staff (ex article L.225-197-1 and L.225-185 jo L.225-186-1 FCC, for company's staff: L.225-177 FCC).

5.2.2.4. Supervisory and Non-Executive Remuneration

In the Netherlands, the remuneration of supervisory board members is determined by AGM ex article 2:145 DCC. Whereas the division of powers to determine the remuneration of the management board members and supervisory board members in a two-tier board structure is clear, there is discussion regarding the authority to determine the remuneration package of non-executive directors in a one-tier board structure.[179] The majority of the Dutch scholars tend to agree that the remuneration package of non-executive directors is determined by the AGM.[180] Provision III.7 of the DCGC 2008 states that ' [t]he remuneration of a supervisory board member is not dependent on the results of the company'[181]. Rule D.1.3. of the UKCGC also states that 'remuneration for non-executive directors should not include share options or other performance-related elements. If, exceptionally, options are granted, *shareholder approval* should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive

[177] Code provision D.2.4. of the UKCGC.

[178] Following Annex 4 - The Irish CGA, the Irish Stock Exchange (ISE) follows the rules of the UK Corporate Governance Code as it 'recognises that the UK Corporate Governance Code (formerly the Combined Code) has set the standard for corporate governance internationally'. (<http://www.ise.ie/Products-Services/Sponsors-and-Advisors/Irish-Corporate-Governance-Annex.pdf>). (accessed in May 2015).

[179] For this discussion, refer to Assink (2014).

[180] This corresponds to the Dutch corporate governance framework. Dutch statutory law and the Dutch Code indicate that the role of the supervisory board and of non-executive directors is similar. It is explicitly determined in (the parliamentary history of) statutory law that the general meeting determines the remuneration of the supervisory board members. Following the same line of reasoning, the general meeting will determine the remuneration of non-executive board members. See Assink (2014).

[181] This is specified in III.7.1-III.7.3, stating that: 'III.7.1 [a] supervisory board member may not be granted any shares and/or rights to shares by way of remuneration; III.7.2 [a]ny shares held by a supervisory board member in the company on whose board he sits are long-term investments; III.7.3 [t]he company may not grant its supervisory board members any personal loans, guarantees or the like unless in the normal course of business and after approval of the supervisory board. No remission of loans may be granted.' Also in the DCGC 2016, these provisions are contained (principle 3.3.2, 3.3.3 and 2.7.6).

director leaves the board'[182] (emphasis added by the author). Hence, shareholders have a say on incentive pay for non-executive directors in the UK, and also, accordingly, in Irish listed companies. In Germany, the remuneration of the supervisory board shall be determined by the shareholders' meeting or the articles of association pursuant to section 113(1) AktG. In contrast to the Netherlands and the UK, section 113(3) AktG allows for performance related pay for supervisory board members. In Austria, the remuneration of the supervisory board members is determined by the shareholders' meeting ex section 98 Austrian AktG. Paragraph 3 of this section also allows for variable remuneration. In Belgium, the BCGC provides in provision 7.7. that '[n]on-executive directors should not be entitled to performance-related remuneration such as bonuses, stock related long-term incentive schemes, fringe benefits or pension benefits'. Article 554 WvV stipulates that any arrangement that includes variable pay to non-executive directors shall be approved by the subsequent AGM.

In France, too, non-executive directors are not allowed to receive stock options or stock grants as compensation (article L. 225-177 FCC). The shareholders' meeting determines the total amount of fees pursuant to article L.225-47 FCC (one-tier board) and L.225-83 FCC (two-tier board).

5.2.2.5. Other Say-on-pay Rights

In France, article L.225-38 FCC contains rules on related-party transactions linked to director remuneration (also see Magnier et al, 2006). These include agreements between the company and its chief executive officer and (managing) directors. Persons subject to this procedure are listed in article L.225-38 FCC. Termination agreements and additional retirement agreements are subject to the rules on related-party transactions and thus require shareholder approval.[183] In the UK, section 190(1) CA 2006 stipulates that a substantial property transaction with a director or a shadow director of the company or holding company, or a person connected with such a director requires shareholder approval (special resolution, hence 75% majority). Sections 197, 198, 200, 201 and 203 CA 2006 contain rules regarding the approval of credit transactions and loans and quasi-loans to a company or holding company director or shadow director, or to a person connected with such a director; here also a 75% majority is needed. Sections 217-219 CA 2006 require shareholder approval for compensation as a result of a loss of office for a director or a shadow director of the company or holding company. In Ireland, similar provisions can be found in section 251 Irish CA 2014 (loss of office), section 252 Irish CA 2014 (transfer of property). These resolutions seem to require a simple majority.

Thomas and Van der Elst (2015, p. 678) explain that in Belgium severance pay arrangements with executive directors and senior executive officers that exceed 12 months (or 18 months)[184] of

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[182] Irish listed companies also adhere to this code (following the rules of the Irish Stock Exchange, *cf. supra*, section 5.2.1).

[183] Transactions that may involve conflicts of interests are also regulated in the other Member States. For example, in Belgium these transactions are contained in article 523 WvV and article 524 WvV. The latter provision specifies that, under a mixed-board structure (*cf. supra*, section 5.2.1), when the articles of association do not contain rules for determining the compensation of the direction committee, the board of directors has the power to set the remuneration package. We discuss the rules on related-party transactions for the other Member States in section 5.2.10.

[184] Belgian law states '*een vertrekvergoeding die hoger is dan 12 maanden loon of, op gemotiveerd advies van het remuneratiecomité, hoger dan 18 maanden loon*'. Thomas and Van der Elst (2015, p. 678) state that whether the legislation requires the approval of the general meeting of shareholder from twelve months onwards or 18 months onwards is a subject of Belgian doctrine debate.

'wage' (in Dutch: *loon*) require the preapproval of the general meeting of shareholders following article 554 WvV.

5.2.2.6. Overview

All Member States require some shareholder approval regarding share (option) schemes and/or individual share (option) bonuses. However, as we have seen, some Member States require a vote on the remuneration policy while others require a vote on the remuneration report. Only the UK requires both a vote on the remuneration report and on remuneration policy. Since say-on-pay resolutions are even more different among Member States than director (re-)elections, table 5 provides an overview to summarize our findings.

TABLE 5

Say-on-pay resolutions

Voting items: Say on Pay	**Austria**	**Belgium**	**France**	**Germany**	**Ireland**	**Netherlands**	**UK**
Remuneration report	No	Mandatory and non-binding (554 WvV) [a].	No	No	Non-mandatory and non-binding, but common in practice[a].	No	Mandatory and non-binding (422 CA 2006) [a].
Remuneration policy	No	No (but included in remuneration report).	No, but individual remuneration FCGC, (new say-on-pay legislation December 2016, *cf. supra,* footnote 168)[a].	Yes, 'remuneration system', mandatory[a].	No	Amendments need approval, mandatory (2:135(1) DCC)[a].	Every three years, mandatory and binding [a].
Incentive plans & share option grants	Resolution on conditional capital increase.	Only for certain agreements if not allowed in AoA, mandatory and binding (520ter WvV)[a].	Mandatory and binding for agreements stipulated in L.225-197-1 and L.225-185 jo L.225-186-1, L.225-177 FCC.	Resolution on conditional capital increase (binding).	Following the UKCGC[a].	Mandatory (2:135(5) DCC)[a], but rejection does not effect the power of representation.	Following the UKCGC [a].
RPT regarding executive pay and other provisions	No	Some severance pay arrangements with executive directors and senior executive officers (554 WvV)[a]. Mandatory and binding.	Yes, L.225-38 FCC. Mandatory and binding.	No	Loss of office section (251 Irish CA 2014); transfer of property section (252 Irish CA 2014)[a]. Mandatory and binding.	No	Substantial property transaction (190 CA 2006); approval of loans, quasi-loans, and credit transactions (197, 198, 200, 201, 203 CA 2006); compensation regarding a loss of office (217-219 CA 2006). Mandatory and binding.
Supervisory and non-executive remuneration	Mandatory and binding (98 Austrian AktG)[a].	Mandatory and binding only for variable pay (554 WvV)[a].	Board fees (L.225-47 for one-tier board and L.225-83 for two-tier). Mandatory and binding.	Yes, mandatory and binding (113(1) AktG)[a].	No, except for performance pay, UKCGC[a].	Mandatory and binding (2:145 DCC)[a].	No, except for performance pay, UKCGC[a].

[a] These resolutions usually require a simple majority (amount of votes required: 50% + 1 vote)

5.2.3. Share Capital Resolutions

As we have seen in section 2 of this chapter, shareholders' decision-making rights on capital matters are partly harmonized at the European level. Accordingly, in a majority of the Member States these shareholder decision-making rights are comparable. Nevertheless, there are still some major differences between the Member States in our sample. Below we briefly outline these differences for resolutions on capital increases, waiver of pre-emption rights, buyback of own shares, and cancellation of own shares. This analysis mostly serves as a preliminary step to the empirical analyses in the subsequent chapters of this study.[185]

5.2.3.1. Capital Increases

Article 29(1) and (2) of the Capital Directive (Directive 2012/30/EU) state:

> 1. Any increase in capital must be decided upon by the general meeting. Both that decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC; 2. Nevertheless, the statutes or instrument of incorporation or the general meeting, […], may authorise an increase in the subscribed capital up to a maximum. […] The power of such body in this respect shall be for a maximum period of five years and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.

Several forms of these two provisions can be found in the laws of the Member States. Whereas the laws in UK, Ireland and the Netherlands adhere closely to the Capital Directive, in other Member States the laws are somewhat different. Below we outline the rules on capital increases in each Member State.

In Germany, in accordance with section 202 *et seq*. AktG, the AGM may authorise the management board to increase capital (and issue shares) in advance, limited to a 50% increase of the capital and a 5-year period. Such a proposal requires a majority of 75%.[186] The 5-year period stems from article 25(2) of the Capital Directive (*cf. supra*, section 2.2 of this chapter). Next, the AGM may decide on a conditional increase of capital that may be used only for the three purposes listed in section 192 AktG.[187] This resolution also requires a qualified three-quarter majority. Section 192(3) AktG stipulates also this capital increase may not exceed 50% of the share capital. To grant rights to employees to subscribe to new shares against the contribution of amounts due to such employees under a profit-sharing plan, the par value of the conditional capital may not exceed 10% of the share capital. Since the authorised capital is stated in the articles of association, the *Satzung,* an authorized capital increase and a conditional capital increase usually also require an amendment to the articles of association. It follows from our data (*cf. infra,* the data that is used in

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[185] For an in-depth analysis of the different share capital rules in these seven Member States, one may for instance refer to Mayson, French and Ryan (2016) for the UK; Cahn and Donald (2010) for the UK and Germany, Van Solinge and Nieuwe Weme (2009) for the Netherlands; Dorresteijn et al. (2009) for Belgium, France, the Netherlands, Germany, and the UK; Wyckaert et al. (2015) for Belgium; Thuillier (2015) for Ireland; *Köhlner Kommentar zum Aktiengesetz* for Germany; and Linde *(Doralt/Nowotny/Kalss Kommentar) zum Aktiengesetz (Österreich)* for Austria.

[186] The articles of association may set a larger majority or set additional requirements.

[187] Paragraph 192(2) AktG lists the following purposes: i) to grant conversion rights or stock warrants to holders of convertible bonds or warrant bonds, ii) to prepare a merger of enterprises, iii) to grant rights to employees of the company to subscribe to new shares against the contribution of amounts due to such employees under a profit-sharing plan established by the company.

chapter 2 of our research) that capital resolutions and the corresponding amendments to the articles of association are usually put to a shareholder vote simultaneously in practice (both require a qualified majority of 75%).[188] In addition to these two option, shareholders may also decide on a capital increase against contributions in cash (ex section 182 AktG) or in-kind (ex section 183 AktG).[189] These resolutions also require a 75% majority and an amendment to the articles of association.

In Austria, a similar system of rules applies to increasing the share capital. Section 169 of the Austrian AktG authorizes increasing capital and issuing shares in advance up to a period of 5 years. Section 159 Austrian AktG contains rules about conditional (or contingent) capital increase, and sections 149 and 150 Austrian AktG stipulate capital increases against contributions and in-kind, respectively. In Austria, each proposal also requires a three-quarters majority. They also mandate amendments to the articles of association and limit the increase of the authorised or conditional capital to half of the share capital (10% for the purpose to grant rights to employees).

Capital increases in the UK require an ordinary resolution ex section 551(1) CA 2006. Directors may also be authorised for a period of up to five years to allot shares ex section 551(2) and (3)(b) CA 2006. A resolution must state the maximum amount of shares that may be allotted under the authorisation or the amount remaining to be allotted under it, and the date on which the (renewed) authorisation will expire ex section 551(3) or (5) CA 2006.[190] In practice, the authority to allot shares is usually granted for less than 5 years. Interestingly, since the authorised capital is no longer required in the UK,[191] an increase of the share capital usually does no longer require an amendment to the articles of association.[192] Similar rules apply in the Netherlands and Ireland, although these countries still require the authorised capital. In Ireland, section 1021(1) Irish CA 2014 stipulates that a capital allotment requires the authorisation by the general meeting, by ordinary resolution, or by the articles of association. Section 1021(3) and 1021(4) Irish CA 2014 cover the provision and the renewal of such an authorisation, respectively, and require that the term of the authorisation be specified and not exceed 5 years. In the Netherlands, article 2:96 DCC stipulates that an increase in the capital needs the approval of the shareholders' meeting under a simple majority rule. In the Netherlands, the AGM may equally provide the board of directors with the authority to increase the share capital for a period of up to 5 years. In practice, the authorisation is often provided for a shorter period in listed companies, and usually for a maximum of 10% of the issued capital: this is also often the case for the listed companies in the UK and Ireland. In both the Netherlands and Ireland, a capital increase that would lead to a higher capital than the authorised capital requires an increase in the authorised capital first by amending the articles of association. The authorised capital usually offers enough space for capital increases, however.

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188 See also Cahn and Donald (2010), pp. 197-198.

189 Ex section 182(1) AktG the articles can provide for a different capital majority. In the case of the issue of non-voting preferred shares this may only be a larger majority.

190 Section 551(5) CA 2006 renews the authorisation to allot shares. The maximum five-year period applies here as well.

191 As from the 1 October, 2009, when the CA 2006 came into full effect.

192 Shareholders that wish to restrict the board's power in this respect may amend the articles of association by ordinary resolution ex section 42 of schedule 2 of the CA 2009 Order 2008. There is therefore no requirement to state the authorised capital in the articles of association, but with any change in capital, a company needs to file a statement of capital regarding the total number of shares (following section 555 CA 2006, form SH01) on the return of share allotment.

In Belgium, the articles of association may provide the board of directors with the authority to increase the authorised capital up to a predetermined amount over a specific period of up to 5 years ex article 603 WvV: this amount may not exceed the amount of the authorised capital. Hence, also in Belgium, this authorisation requires an amendment to the articles of association, which entails an extraordinary resolution that is presented to the EGM. Article 604 WvV stipulates that the board provide the shareholders with a detailed report that contains a description of the purposes for the capital increase: this report should be mentioned in the AGM agenda. Article 581 WvV also grants the AGM the ability to decide to increase the share capital, either financed by contributions in cash or in kind. One may note that article 606(1) WvV does not allow a capital increase through a contribution in kind by a shareholder who holds more than 10% of the voting rights in the company.

Lastly, in France, article L.225-129 FCC stipulates that only an *extraordinary* general meeting is competent to decide an immediate or eventual capital increase, on the basis of a report from the board of directors or the executive board, which must be effected within five years.[193] It may delegate this ability to the management board or the executive board ex article L.225-129-2 FCC for a predetermined amount: this article states that this delegation's duration shall not exceed 26 months.[194] The article further empowers the board of directors or the executive board to determine the conditions of issue, to declare the completion of the resultant capital increases and to make the appropriate amendment to the articles of association, albeit within the limits of the delegation that was provided to them. Article L.225-129-2 FCC also stipulates that the issues referred to in the articles L.225-135 to L.225-138-1, L.225-177 to L.225-186, L.225-197-1 to L.225-197-3, and L.228-11 to L.228-20 (the latter articles refer to preference shares), require special resolutions. For instance, article L.225-138 FCC entails a capital increase reserved for one or more persons designated by name, or for persons who meet certain criteria. Paragraph three of this article stipulates that the maximum term for this capital increase is eighteen months. Article L.225-138-1 FCC relates to capital increases that are reserved for members of a company savings plan. And, article L.225-177 FCC stipulates that the extraordinary general meeting may authorise the management board or the executive board to grant stock options to the company's staff. Consequently, article L.225-180 FCC determines to which employees these options may be granted. Lastly, articles L.225-197-1 to L.225-197-3 FCC contain rules about the empowerment of the management board or the executive board by the EGM to make a free allotment of existing or new shares to (certain categories of) the company's staff.

5.2.3.2. Waiver of Pre-emption Rights

Pre-emption rights protect incumbent shareholders against dilution of their stakes. Since pre-emption rights can be costly for companies,[195] proposals to allot shares or increase company share

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[193] This time limit does not apply to capital increases made subsequent to the exercise of a right attached to a transferable security giving access to the capital or subsequent to the exercise of options as envisaged in Article L. 225-177. Furthermore, article L.225-129-1 FCC holds that when the extraordinary general meeting decides to effect a capital increase, it may delegate the power to determine the terms and conditions of the issue of securities to the board of directors or the executive board.

[194] Ex article L.225-129-5, the management board or executive board is required to draw up a supplementary report for the next ordinary general meeting in the manner determined in a '*décret en Conseil d'Etat*'.

[195] For example, Cahn and Donald (2010) describe the obstacles to a company's access to financial markets caused by these pre-emption rights. During the 14-day period that shareholders are allowed to exercise or

capital usually go hand in hand with proposals to the cancel the incumbent shareholders' pre-emption (or pre-emptive) rights. Article 33(4) of the Capital Directive (Directive 2012/30/EU) states that pre-emption rights may not be restricted in the articles of association, but only be a shareholders' decision. Article 44 of the Directive requires for this decision at least a two-thirds majority. The Member States may also allow for a simple majority when at least half the subscribed capital is represented.

When we look at our sample (*cf. infra*, chapter 2), we notice that in some Member States, the waiver of pre-emption rights is presented at the shareholders' meeting as a separate resolution (Ireland, the UK, and the Netherlands), while other Member States add this waiver to capital increase proposals (Austria, Belgium, France, and Germany). As we have seen in the previous section, the latter countries require a qualified majority for capital increases. In contrast, in Ireland, the UK and the Netherlands, these proposals require a simple majority, and hence, the waiver of pre-emption rights, which requires a higher majority as stipulated in the Capital Directive, needs a separate vote.

In Austria[196], Belgium[197], France[198], Germany[199], Ireland[200], and the UK[201] require a 75% majority for the cancellation of pre-emption rights. the Netherlands requires a qualified two-thirds majority if less than 50% of the capital is present during the meeting; otherwise only a simple majority vote is required (ex article 2:96a(7) DCC).

5.2.3.3. Buy-back Own Shares

Company share capital is affected not only by the allotment of new shares and the waiver of pre-emption rights, but also by share buybacks or share repurchases. In accordance with article 21 of the Capital Directive, Member States *may* set a limit for share buybacks that may not be lower than 10% of the subscribed capital. Some Member States have implemented this limit for treasury shares (i.e., Austria[202], Belgium[203], Germany[204], France[205], and Ireland[206]). The UK has repealed the limit that was previously in place in section 725 CA 2006,[207] and the Netherlands has increased the limit to 50% in article 2:98(2) DCC. In a majority of the Member States, the authorisation to repurchase shares requires a simple majority of the votes. In the UK, market purchases of own shares only

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trade their pre-emption right to a third party according to article 33(3) of Directive 2012/30/EU, the price of the stock can fluctuate substantially. This volatility presents a pricing problem and accordingly, Cahn and Donald argue that the existence of pre-emption rights causes issuers to set issue prices at a substantial discount of up to 25%. Cahn and Donald (2010, p. 201).

196 Section 153(4) Austrian AktG, section 170(2) Austrian AktG.

197 Article 605 WvV stipulates that the authorisation explicitly needs to state the waiver of pre-emption rights.

198 Article L.225-135 FCC, L.225-138 FCC.

199 Section 186(3) AktG, section 203(2) AktG.

200 Section 1023(3) Irish CA 2014.

201 Section 283 CA 2006.

202 Section 65(2) Austrian AktG.

203 Article 322(1) WvV requires a limit of 20 percent.

204 Section 71(1) and (2) AktG.

205 Article L.225-210 FCC.

206 Section 109(1) Irish CA 2014.

207 The amendment came into force on 1 October, 2009. Section 5 Treasury Shares, Companies, The Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009, Statutory Instruments 2009 no. 2022.

require an ordinary resolution whereas off-market purchases required a special shareholders' resolution before 2013.[208] In Ireland, section 1074(1) Irish CA 2014 requires a normal resolution for market purchases of own shares: off-market purchases still require a special resolution ex section 1075 Irish CA 2014. In Austria[209], Germany[210], France[211], and the Netherlands[212], a simple majority is also required. In contrast, in Belgium, the authorisation to repurchase own shares is an extraordinary resolution that requires a qualified majority of 80% of the voting rights.[213] [214]

5.2.3.4. Cancelling Shares and Reducing Share Capital

Companies may also cancel their own shares. Whereas the law in France[215] and the Netherlands[216] requires shareholder approval for the cancellation of shares, in the UK and Ireland treasury shares may be cancelled at any time pursuant to article 726 *et seq*. CA 2006 and article 209 Irish CA 1990 (only a notification to the shareholders' meeting is required). In Germany and Austria, the authority to cancel treasury shares, without further resolution by AGM, is included in the authorisation to buy back own shares ex section 71(8) AktG and 65(8) Austrian AktG respectively. In Belgium, article 621 WvV stipulates that the acquisition of treasury shares in order to cancel these shares immediately for capital reduction purposes does not require a shareholders' vote.

The decision to reduce share capital usually requires an amendment to the articles of association (for instance, see article 2:99(1) DCC in the Netherlands, article 612 WvV in Belgium). In France, the reduction of share capital requires an extraordinary resolution ex L.225-204 FCC. In Germany and Austria, a share capital reduction also requires a qualified majority of three-quarters ex section

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[208] The requirement of a special resolution was omitted with Regulations 2013, Amendment of Part 18.
[209] Section 65(1)(6) Austrian AktG.
[210] Section 71(6) AktG.
[211] Article L.225-210 FCC.
[212] Article 2:98 DCC.
[213] Article 208 of the royal decree of 31 January, 2001 *Koninklijk besluit tot uitvoering van het wetboek van vennootschappen* jo article 620 WvV jo article 559 WvV. Article 559 requires a quorum of 50% of the capital and 80% majority of the votes. For an example one may refer to the 2014 AGM of AB Inbev.
[214] One may note that *share redemptions* differ from normal share buybacks. Companies may issue shares that are redeemable (thus can be repurchased or called) at the option of the company or the shareholder. Article 43 of the Capital Directive contains some rules about redeemable shares. However, these shares do not exist in every Member State (although mechanisms with preference shares may resemble these shares). In Ireland and the UK redeemable shares exist. Chapter three of Part 18 of the UK Companies Act regulates redeemable shares. Section 684(3) CA 2006 stipulates that public limited companies may only issue redeemable shares if they are authorised to do so by their articles of association. The articles of association or a shareholders' resolution may authorise the board to determine the terms, conditions and manner of share redemption (section 685). Section 688 states that redeemed shares are treated as cancelled shares. In Ireland, share redemptions are regulated under section 211 of the Companies Act 1990. Although one should keep in mind that share redemptions are not the same as normal share buybacks, in our research we include both type of resolutions in the category 'share buybacks'. Furthermore, the shareholders' meeting often authorises the board to 'trade in the company's shares'.
[215] Article L.225-109 FCC states that in the event of the cancellation of purchased shares, capital reduction is authorised or decided by an extraordinary general meeting. In this respect, also see article L.225-207 FCC: this article stipulates that the general meeting which has decided on a capital reduction not motivated by losses may authorise the board of directors or the executive board, as applicable, to purchase a specified number of shares to cancel them.
[216] Article 2:99(1) DCC, simple majority voting rule.

222(1) AktG and 175(1) Austrian AktG respectively. This is also the case in Ireland (ex section 1252(1) Irish CA 2014) and in the UK (ex section 645(1) CA 2006).[217]

5.2.3.5. Overview

Table 6 provides an overview of the different majority rules that are required for capital resolution in the seven Member States.

[217] In the UK, a court confirmation for the reduction is required.

TABLE 6

Capital resolutions

Voting items: capital	**Austria**	**Belgium**	**France**	**Germany**	**Ireland**	**Netherlands**	**UK**
Allot shares	Qualified majority (75%), change to articles.	Qualified majority (75%), change to articles.	Qualified majority (75%), change to articles.	Qualified majority (75%), change to articles.	Simple majority.	Simple majority.	Simple majority.
Waiver of pre-emptive rights	Qualified majority (75%), usually with authorisation capital increase.	Qualified majority (75%), usually with authorisation capital increase.	Qualified majority (2/3 + quorum), usually with authorisation capital increase.	Qualified majority (75%), usually with authorisation capital increase.	Qualified majority (75%)	Majority of two-thirds if turnout < 50% of capital.	Qualified majority (75%)
Buyback shares	Simple majority.	Qualified majority (80%).	Simple majority.	Simple majority.	Simple majority.	Simple majority.	Simple majority.
Cancel own shares	Included in authorisation to buyback shares.	Included in authorisation to buyback shares.	Qualified majority (75%).	Included in authorisation to buyback shares.	No resolution required.	Simple majority.	No resolution required.
Reduction share capital	Qualified majority (75%).	Qualified majority (75%).	Qualified majority (75%).	Qualified majority (75%).	Qualified majority (75%).	Majority of two-thirds if turnout < 50% of capital.	Qualified majority (75%).

5.2.4. Amendments to the Articles

In the previous sections (3.1, the nature of the general meeting, and 5.2.3, share capital resolutions) we considered resolutions containing specific categories of amendments to the articles of association. In this section we outline the general rules regarding these voting items.

Usually resolutions regarding amendments to the articles of association require a qualified majority. In Germany and Austria, respectively, paragraph 179(2) AktG and paragraph 146(1) Austrian AktG require a majority of 75% of the capital represented at the shareholders' meeting for any amendment to the *satzung*, but the articles of association may set a different capital majority.[218] In the UK and Ireland the alteration of the company's articles requires a special majority of 75% pursuant to section 21 CA 2006 and section 15 Irish CA 1963. In France and Belgium an amendment to the articles of association requires an extraordinary resolution. As we have seen in section 3.1 of this chapter, in France, requirements for extraordinary resolutions follow from article L.225-96 FCC, which mandates a quorum of 25% on the first call of the EGM and a two-thirds majority of the votes. In Belgium, article 558 *et seq*. WvV requires different qualified majorities for different extraordinary voting items. For an amendment of the articles of association *not* related to a change of the purpose of the enterprise a quorum of 50% on the first call and a majority of 75% of the votes is required ex article 558 WvV. An amendment to the articles association that is related to the change of the purpose of the enterprise requires 80% majority of the votes pursuant to article 559 WvV. In the Netherlands a *statutenwijziging* does not require a qualified majority ex 2:121 *et seq*. DCC, but the articles of association may require a higher majority.[219]

Required majorities are not the only element to differ across Member States and companies; variation in how items are placed on the agenda also exists. Whereas UK companies usually put one combined voting item for all proposed amendments to the articles of association to a shareholders' vote, some (French) companies in continental Europe use separate voting items for each amendment (also see Van der Elst, 2011, p. 10). Examples of companies that use separate agenda items for different modifications to the articles are Pernod Ricard SA (2012 AGM) and Vienna Insurance Group AG (2010 AGM).

5.2.5. Annual Accounts

Van der Elst (2012, p. 9) describes the significant differences among agenda items in terms of approval of the annual financial statements. For instance, in the UK and Ireland, the accounts and reports are approved by the board and signed by a director after which both the accounts and reports are "laid before" the general meeting pursuant to section 414 jo 437 UK CA 2006 and section 431 Irish CA 2014, respectively. In Germany, management submits the annual financial statements and the annual report to the supervisory board, which reviews both, ex section 170 jo 171 AktG, respectively. Section 172 jo 173(1) AktG states that the annual financial statements shall be approved by the supervisory board or by the shareholders' meeting if the management board and the supervisory board have resolved that the annual financial statements are to be approved by the shareholders' meeting or if the supervisory board has not approved the annual financial

[218] In the case of an amendment of the purpose of the enterprise the articles may only provide in a larger capital majority.

[219] One may refer to article 2:120 DCC, stating that all resolutions for which no greater majority is required either by the law or by the articles of association be passed by absolute majority (i.e., simple majority) of the votes cast.

statements. Section 96(1) Austrian AktG states that these documents are reviewed by the supervisory board, and are reported to the AGM. Paragraph 4 of this article asserts that the supervisory board determines the financial statements, unless the boards decide on a determination by the AGM. In the Netherlands, the management board and supervisory board (or, in case of a one-tier board structure, the executive and non-executive directors) must sign the accounts ex article 2:101(2) DCC. The AGM adopts the accounts ex article 2:101(3) DCC (simple majority). In France, article L.225-100 FCC stipulates that AGM 'deliberates and rules' (Van der Elst, 2012, p. 9) on all matters related to the annual accounts and, where applicable, the consolidated accounts, for the previous financial year of the FCC. In Belgium, the AGM approves the accounts ex article 554 WvV: shareholders have to 'hear' the annual report, and 'to treat' the annual accounts (2012, p. 9).

5.2.6. Dividends

The distribution of dividends is also (partly) harmonized in the Capital Directive (article 17),[220] but this voting item nonetheless somewhat differs among Member States. The directive does not require shareholder approval for the distribution of dividends, but some Member States require a shareholder vote. For example, section 174(1) AktG states that the shareholders' meeting "shall resolve on the appropriation of distributable profits" (in German: '*Die Hauptversammlung beschließt über die Verwendung des Bilanzgewinns*'). In Austria, section 104(2) Austrian AktG states that the agenda of the AGM shall include, *inter alia,* a resolution on the use of the balance sheet profit, if this information is disclosed in the financial statements ('*die Beschlussfassung über die Verwendung des Bilanzgewinns, wenn im Jahresabschluss ein solcher ausgewiesen ist*'). This provision also refers to section 104(4) Austrian AktG. And in France, shareholders may approve the allocation of income and dividend. Article L.232-18(1) FCC states that shareholders may also decide whether they receive these dividend payments (partly) in cash or in shares. In contrast, for instance the Netherlands does not require this choice by law and hence, many public companies do not offer this choice to their shareholders.[221] [222] And, for instance in the UK, dividends must be in cash, unless the articles of association state otherwise (*Wood v Odessa*, *Waterworks Co Case*, 1889, following Mason, French and Ryan, 2016, p. 287). the Netherlands, UK, Belgium, and Ireland do not require shareholder approval for dividends, but in practice, companies usually put this agenda item to a vote (*cf. infra*, data in the second chapter of this study). One may note that the DCGC 2008 requires that '[a]

[220] Article 17 contains two tests for dividend distributions. Paragraph one of the article states that '[e]xcept for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law or the statutes.' In addition, paragraph three adds that '[t]he amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes'. Next. Article 18 of the directive states that '[a]ny distribution made contrary to Article 17 must be returned by shareholders who have received it if the company proves that those shareholders knew of the irregularity of the distributions made to them, or could not in view of the circumstances have been unaware of it'.

[221] When analysing the minutes of Dutch AGMs for our research in chapter six of this dissertation, we noted that many private investors ask about the possibility to provide this '*keuzedividend*'.

[222] One may also note that, for example, in Germany no more than half of the annual net profit may be transferred to other profit reserves (section 58(1) AktG).

resolution to pay a dividend shall be dealt with as a separate agenda item at the general meeting' (provision IV.1.5, in DCGC 2016 this is included in provision 4.1.3 sub iv.).

5.2.7. Discharge

In continental Europe shareholders usually discharge their directors for conduct in the past financial year. In general, discharge is an act of the AGM, which declares that the shareholders will not have the intention to hold the directors liable for actions in a particular financial year. In Belgium, shareholders may also discharge the auditor (*commissaris*) ex article 554 WvV. Discharge is binding in the Netherlands,[223] but in Germany and Austria it only constitutes an expression of trust,[224] and in France, discharge is not binding.[225] In Belgium, the effect of the discharge is similar to the Netherlands, but one should note that when the AGM approves the decision to discharge its directors, minority shareholders that did not vote in favour of the discharge may still claim damages (*minderheidsvordering* ex article 562 WvV).[226]

In the UK, discharge of directors is void pursuant to section 232(1) CA 2006: '[a]ny provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.' Section 239 allows that the general meeting can ratify 'conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company' (section 239(1) CA 2006). This is, in contrast to the decision to discharge, a case-based ratification of the director's behaviour. Discharging directors is also void in Ireland ex article 235(1) CA 2014. Paragraph 3 of this article states that 'a company may, in pursuance of any such provision as is mentioned in that subsection, indemnify any officer of the company against any liability incurred by him or her— in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted; or (b) in connection with any proceedings or application referred to in, or under, section 233 or 234 in which relief is granted to him or her by the court'.

5.2.8. External Auditor

The (re-)appointment of the auditor is also a common agenda item in a majority of the seven Member States, pursuant to article 37(1) of the Audit Directive (2014/56/EU, which amended

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223 Generally, directors cannot be held liable for conduct in the financial year they are discharged for by the AGM. The decision to discharge only limits internal liability for the conduct that was known upon approval of the annual accounts.

224 Section 120(2) AktG states that ratification shall not constitute a waiver of claims for compensation of damage. Following Manifest (2008).

225 The companies in our sample that are incorporated in France did not put this voting item on the agenda.

226 Article 562 WvV stipulates (in Dutch): '*[e]en vordering tegen de bestuurders kan voor rekening van de vennootschap door minderheidsaandeelhouders worden ingesteld. Deze minderheidsvordering wordt voor rekening van de vennootschap ingesteld door één of meer aandeelhouders die, op de dag waarop de algemene vergadering zich uitspreekt over de aan de (bestuurders) te verlenen kwijting, effecten bezitten die ten minste 1 % vertegenwoordigen van de stemmen verbonden aan het geheel van de op die dag bestaande effecten, of op diezelfde dag effecten bezitten die een gedeelte van het kapitaal vertegenwoordigen ter waarde van ten (1 250 000 EUR). […] Voor de aandeelhouders met stemrecht, kan de vordering slechts worden ingesteld door personen die de kwijting niet hebben goedgekeurd en door personen die de kwijting wel hebben goedgekeurd maar waarvan blijkt dat zij ongeldig is. Voor de aandeelhouders zonder stemrecht, kan de vordering bovendien slechts worden ingesteld in de gevallen waarin zij hun stemrecht hebben uitgeoefend overeenkomstig artikel 481 en dit voor de daden van bestuur die betrekking hebben op de beslissingen genomen in uitvoering van hetzelfde artikel*'.

2006/43/EC).[227] Paragraph 2 of this article states that Member States may allow other 'systems or modalities for the appointment of the statutory auditor or audit firm'. In Ireland, Section 160(2) of the Irish CA 1963 provides that the auditor of an Irish company shall be automatically re-appointed at a company's annual general meeting without any resolution being passed unless (a) the auditor is not qualified for reappointment, or (b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed, or (c) he has given the company notice in writing of his unwillingness to be re-appointed. As a result, the AGM usually does not vote on the *reappointment* of auditors in Ireland.[228] In contrast, the authorisation to fix the remuneration of the auditors requires a shareholders' vote pursuant to section 160(8)(b) of the Irish CA 1963 as is the case for UK companies, ex section 492 CA 2006. In Belgium, a shareholders' vote on the remuneration of the *commissaris* is required ex article 134(2) WvV. AGMs in other continental European companies usually do not vote on auditor remuneration.

5.2.9. Notice Period for General Meetings (UK and Ireland)

In the UK and Ireland companies usually put proposals regarding the notice period for general meetings on the agenda. In accordance with section 307A CA 2006, a special resolution can reduce the notice period to a minimum of fourteen days for the first general meeting after the annual general meeting at which the special resolution was passed (section 307A(4) CA 2006, 75% majority). In Ireland a special resolution is also required to shorten the notice period for general meetings.[229]

5.2.10. Related-Party Transactions

Related-party transactions (or related-party agreements) are described by the EC as 'transactions between a company and its management, directors, controlling entities or shareholders, [that] create the opportunity to obtain value belonging to the company to the detriment of shareholders, and in particular minority shareholders' (EC, 2014, p. 5[230]). Articles L.225-38 *et seq*. FCC regulates 'related agreements' in France. Related agreements are defined as agreements between the company and its chief executive officer, one of its deputy managing directors, one of its directors, one of its shareholders holding more than 10% of the voting rights or, in the case of a corporate shareholder, the controlling company pursuant to article L.233-3 FCC. The auditor must present a report on

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[227] The Audit Directive (2014/56/EU) of 14 April 2014 adds a new paragraph to article 37: '[a]ny contractual clause restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be prohibited. Any such existing clauses shall be null and void'.

[228] An exception is the 2014 AGM of CRH Plc. The company explains in its meeting notice: 'The Auditors, Ernst & Young, Chartered Accountants, are willing to continue in office. Having had regard to recent developments in corporate governance practice, the Directors have decided to provide shareholders with an opportunity to have a say on the continuation in office of Ernst & Young by way of an advisory, non-binding vote.' (p. 12). (<http://www.crh.com/docs/annual-report-2013/agm-circular-14-03-14.pdf?sfvrsn=2>). (accessed in May 2015).

[229] Section 133 jo 141 Irish CA, 1963.

[230] EC (2014a) Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement*, COM (2014) 213 final.* April 9, 2014.

these agreements to the general meeting ex article L.225-40 FCC. Also a shareholder vote is required ex L.225-41 FCC (*ex post* approval). In Germany, shareholder approval is required for those transactions that require the supervisory board's consent but this consent is withhold, ex section 111(4) AktG.

In addition to the provisions in the CA 2006 regarding the approval of the agreements that we considered in section 5.2.2.5., chapter 11 of the UK Listing Rules contains more general rules on related party transactions. Paragraph 3 of LR 11.1.7 requires shareholder approval of these related party transactions (larger than a percentage ratio of 5%).

5.2.11. Enterprise Agreements (Germany)

Konzern Recht in Germany requires shareholder approval for enterprise agreements (section 291 *et seq*. AktG). For approval of these agreements a 75% majority of the represented capital is needed pursuant to section 293(1) and (2) AktG[231] (the articles may mandate a larger capital majority and additional requirements).

5.2.12. Other Resolutions

Many other (categories of) resolutions can be found on the agendas of AGMs (and EGMs) in Europe in addition to the ones already discussed. Major decisions or transactions usually also require shareholder approval. For instance, in the Netherlands, resolutions by the board of directors that lead to changes in the identity or character of the company must be approved by the shareholders' meeting pursuant to article 2:107a DCC, including, for instance, important joint ventures (b) and participation or disposal of capital that amounts to at least one-third of the value of the balance sheet (a). In contrast, the CA 2006 does not set out any specific rule for shareholder approval regarding major transactions, but Rule 10 of the UK Listing Rules requires prior shareholder approval for class 1 transactions.[232] Furthermore, 179a AktG requires approval with a majority of 75% of the share capital for a contract by which a company binds itself to transfer the entirety of its assets that do not fall under the provisions of the *Umwandlungsgesetz* (UmwG, translation: Reorganisation Act). Moreover, the conversion or liquidation of the company needs separate shareholder approval in all seven Member States (different majorities are required). In the Netherlands, shareholders must authorise the management board to file for bankruptcy ex article 2:136 DCC. However, the articles of association may determine another procedure. Lastly, in Germany, ex section 327a(1) AktG, the AGM may resolve, upon request of a major shareholder that holds at least 95% of the share capital, the transfer of the other shareholders' shares to this major shareholder against the payment of 'adequate' cash compensation.

The aforementioned resolutions are not often placed on the agenda of the meeting. In contrast, a recurrent, country-specific resolution category concerns political donations and expenditures in the UK: for these donations and expenditures a shareholder vote is required ex section 366 CA 2006.

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231 Paragraph 1 of this article stipulates enterprise agreements, paragraph two control agreements and profit transfer agreements.

232 'A transaction where any percentage ratio is 25% or more'. Percentage ratios result from applying the class test calculations that are set out in Annex 1 of the Listing Rules to a transaction.

5.3. Concluding Remarks

Sections 5.2.1-5.2.12 show that there are large differences in shareholder decision-making rights in the European Member States. Although there are already some differences – for example in shareholder forum rights as a result of minimum harmonization – shareholder decision-making rights are generally not harmonized at the European level, and hence, differ substantially. Shareholders may generally (re-)elect board members in all seven Member States (supervisory board members under a two-tier board structure), but there are differences, namely in the terms of office, the employee involvement, and the requirements for the election of independent directors. Say-on-pay resolutions probably differ most of all resolutions among Member States. Some Member States (UK, Belgium) require companies to put the remuneration report to a shareholder vote. Other countries require a vote for the remuneration policy (Netherlands, UK, Germany [remuneration *system*]). In France, new say-on-pay legislation is on its way that probably also contains a vote on the remuneration policy. Besides these say-on-pay provisions, Member States have also adopted different rules concerning shareholder approval of incentive schemes, bonuses, related-party transactions, and other pay-related decisions. Proposed amendments to the Shareholder Rights Directive include a European say on pay (*cf. supra*, section 2.5 of this chapter). The introduction of the European say on pay could significantly contribute to harmonization of this shareholder right. In contrast, resolutions related to the company's capital are already harmonized at the European level, though here too we found some major differences. In addition to these three large categories of shareholder decision-making rights –director elections, say on pay, and capital resolutions – we also outlined the differences for i) amendments to the articles of association, ii) annual accounts, iii) dividends, iv) discharge, v) the auditor, vi) notice period of general meetings, vii) related-party transactions, viii) enterprise agreements, and ix) a remainder category of 'other' resolutions. In order to provide an overview of these different decision-making rights in the seven Member States, and importantly, to provide a framework for the empirical analyses in the next chapters, we have determined fifteen different resolution categories. These resolution categories are displayed in table 7.

TABLE 7

Fifteen Resolution Categories

Resolution Category		**Explanation**	**Where do shareholders have these rights (in practice)?**	**Statutory right or best practice?**	**Required majority?**
i. Director (re-)elections		(re-)election of management board member and supervisory board members in a two-tier board structure, and executive and non-executive directors in a one-tier board system.	All seven countries. *Differences:* listed companies in the UK and Ireland (FTSE-350, Irish listing rules) are required to put directors up for (re-)election every year. In Austria, Germany , the Netherlands (and France): shareholders elect supervisory board members (but note co-determination rules).	Generally, the right is statutory, but in the UK it follows from the articles of association (and the UKCGC).	Simple majority.
ii. Say on Pay	*Overall*	All resolutions regarding executive pay (including supervisory board members and non-executive directors).	All seven countries in the sample have some form of say on pay, but these rights are very different.	Statutory and/or best practice in corporate governance codes.	Simple majority.
	Remuneration report	Resolutions regarding the remuneration report.	UK, Belgium, Ireland.	UK and Belgium: statutory requirement. Ireland: no statutory requirement, but some companies follow this best practice.	Simple majority.
	Say on Pay Other	All resolutions that concern pay matters other than the remuneration report, including approval of the remuneration policy, authorization of share and share option grant, etc.	All seven countries in sample have some form of say on pay.	Statutory and/or best practice in corporate governance codes.	Simple majority.
	Remuneration policy	All resolutions that concern (amendments to) the remuneration policy and the remuneration system (the latter for Germany).	The Netherlands, UK, Germany (the latter, shareholders have a vote on the 'remuneration *system*'). France: as per December 2016 *ex ante* say-on-pay rules (*cf. supra*, section 5.2.2).	Statutory.	Simple majority.

	Incentive plans and share (option) grants authorization	All proposals regarding (long-term) incentive plans.	All seven countries in sample (Austria and Germany a conditional capital increase that requires an amendment to the articles of association).	The Netherlands, France, Belgium, Germany and Austria: statutory. UK and Ireland: UKCGC.	Simple majority, except for Austria and Germany regarding the conditional capital increase: 75% majority.
	Individual remuneration[233]	Approval of bonuses or other forms of special pay granted to a particular director such as retention bonuses.	France (new legislation December 2016, *cf. supra,* section 5.2.2.), the Netherlands.	France: FCGC, as per December 2016 statutory. The Netherlands: statutory.	Simple majority.
	RPT regarding Say on Pay	Related party transactions concerning say on pay.	France UK, Ireland: loss of office, substantial property and loans (latter UK only). Belgium: particular severance pay arrangements.	Statutory.	Simple majority.
	Supervisory and non-executive pay	Remuneration and remuneration policy for supervisory board members and non-executive directors, including board fees.	All seven countries in sample.	Statutory (rules regarding incentive pay in the national corporate governance codes).	Simple majority.
iii. Capital increase[234]		All resolutions related to (the authorisation of) a capital increase, which are not contained in the category incentive plans.	All seven countries in sample.	Statutory.	Austria, Belgium, Germany, France: 75% The Netherlands, UK, Ireland: simple majority.
iv. Waiver of pre-emption rights		All resolutions related to the waiver of pre-emption rights. If a capital increase proposal also includes the waiver of these rights, the proposal is included in both categories.	All seven countries in sample.	Statutory.	Qualified majority of 75% in all countries except for the Netherlands, two-thirds majority if less than 50% turnout, otherwise simple majority.

[233] Although this category is not a separate category in this chapter's analysis, when analysing the meeting documents of the companies in our sample, we recognized that this distinction can be made in practice. Hence, we included an additional voting item category in our analysis.
[234] Including convertible bonds.

v. Share buybacks	All resolutions related to share buybacks.	All seven countries in sample.	Statutory	Simple majority for all countries, except for Belgium (80%). *Remark*: in the UK a 75% majority was required for off-market purchases before 2013 (now repealed).
vi. Cancel treasury shares	All resolutions related to the cancellation of treasury shares.	France, the Netherlands, Germany, Austria. NB: capital reduction usually requires amendments to articles of association, see *category vii* below.	Statutory (in Germany and Austria it is included in the authorization to buyback own shares)	France, Germany, Austria: 75%. the Netherlands: simple majority.
vii. Amendments to the articles	All resolutions related to any amendment of the articles that are not already contained in either a capital resolution category or a say-on-pay resolution category.	All seven countries in sample.	Statutory	75% majority, but: the Netherlands: simple majority Belgium: either 50% quorum and 75% majority, or 80% majority. France: 25% quorum first call and two-thirds majority
viii. Financial statements	All resolutions related to the adoption of the financial statements.	The Netherlands, UK, Ireland, France, Belgium	Statutory	Simple majority
ix. Dividends	All resolutions related to dividends.	All seven countries in sample.	In Austria, Germany and France: Statutory. Nonetheless, common practice in all Member States (for the Netherlands: provision in DCGC).	Simple majority.
x. Discharge	All resolutions related to discharging directors (supervisory and management board members).	The Netherlands, Belgium (also the statutory auditor), Germany, Austria, France.	Statutory.	Simple majority.
xi. Auditors	All resolutions related to the external auditor, including the appointment and pay.	Appointment: all Member States in sample (except for Ireland, usually not a voting item) Remuneration: Ireland, UK, Belgium.	Statutory.	Simple majority.

xii. RPT	All resolutions related to related party transactions, not included in the say-on-pay category.	UK, France, Germany (the latter only those transactions that require the supervisory board's consent, but is withhold)	France, Germany: statutory UK: Listing Rules.	Simple majority.
xiii. Enterprise agreements	All resolutions related to enterprise agreements.	Germany	Statutory.	Simple majority.
xiv. GM 14 days	All resolutions related to decreasing the notice period for general meetings other than AGMs to fourteen days.	UK, Ireland	Statutory.	75% majority.
xv. Political donations	All resolutions related to political donations.	UK	Statutory.	Simple majority.

6. CONCLUSIONS AND DISCUSSION

We outlined the legal position of AGMs from a comparative perspective. For this, we focused our research on the three functions of AGMs and the shareholder rights connected to these functions.

We have seen that few aspects of shareholder meetings are harmonized at the European level. Hence, a large part of our analysis in this chapter focuses on the national level. There are many (sometimes subtle) differences among the countries. First of all, the organisation of the general meeting *an sich* differs among Member States: whereas in the Netherlands, Austria, Germany, the UK and Ireland the AGM is convened on an annual basis and considers all resolutions, and EGMs are convened only in special cases, in France and Belgium the annual meeting is divided in an ordinary part (often referred to as the AGM) and an extraordinary part for particular resolutions (the EGM). In Belgium these are formally two different meetings, with separate minutes, but, in practice, the AGM and the EGM usually take place on the same day. Participation and voting procedures may also differ (i.e., majority rules, quorum, the calculation of voting outcomes, etc.). For example in France, long-term shareholders often have double voting rights.

With the Shareholder Rights Directive the right to ask questions was introduced at the European level. Prior to this Directive, many Member States already guaranteed this shareholder right. As a result, there are some (minor) differences in the national laws. For instance, in Germany the right to ask questions is incorporated in the AktG in a detailed manner and explicitly states that the articles of association may authorise the chairman of the meeting to limit the shareholders' forum rights. This is not stated in the national laws of other the countries, and analysis of the articles of association of the companies in our sample has shown that these provisions in the articles of association are not (very) common in the other Member States either. Nonetheless, since the chairman of the meeting has the general task of managing the proper conduct of the meeting, in these countries, he or she has some capacity to limit the question rights as well, but usually only in exceptional cases. In chapter 6 of this study we investigate the use of the forum rights for a sample of Dutch companies.

The comparative analysis of the resolutions contains fruitful insights. In contrast to forum rights, shareholder decision-making rights differ largely among the Member States, which increases the difficulty of doing empirical research. Adopting the annual accounts might seem a rather straightforward resolution, but as we have seen, the legal implications of this resolution in the different countries are completely different. And then we have the large variety of say-on-pay resolutions, the differences regarding director elections, etc. Consequently, to be able to conduct comparative empirical analyses in the subsequent chapters, we developed a framework of fifteen resolution categories. Information problems are severely present and may cause biases. One also must consider the substantial differences among AGMs and the legal mechanisms behind them.

The question of whether these large differences are desirable remains. On the one hand, a (partly) harmonised regime may contribute to the functioning of the European capital market, for example by lowering the information costs for international investors wishing to exercise their voting rights in different Member States. On the other hand, there are large differences, not only in ownership concentration and company governance structures as we will see in the second chapter, but also in the general perspective on corporate law (for example, the German *Mittbestimmung* rules compared to the Anglo-Saxon system) in the European Union, which makes the harmonisation of particular shareholder rights difficult and, in some situations, undesirable.

For the near future, we see the national implementation of the European say on pay, which may bring us one step closer to a more uniform framework of shareholder decision-making rights.

CHAPTER 2 - THE AGM IN PRACTICE

ABSTRACT

In this chapter we assess the practical characteristics of AGMs in an extensive empirical analysis. For this, we consider the AGMs of seven European Member States between 2010 and 2014. We show that, although there are large differences in total and small shareholder turnout rates among Member States, there is an overall increasing trend in the 2010-2014 period. Next, we find that, in line with previous studies, ownership concentration and voting power of large shareholders is generally higher in continental European countries. Regarding shareholder voting behaviour, our research shows that certain voting items receive higher dissent rates than others, especially when only considering the outsider shareholder base. These voting items include inter alia director (re-)elections and say-on-pay resolutions. It seems that shareholders are genuinely more interested in these voting items.

1. INTRODUCTION

In the previous chapter of this study we established the legal framework for AGMs in Europe. We considered the national frameworks of seven European countries: Austria, Belgium, France, Germany, Ireland, the Netherlands, and the UK. In this part of our research, we establish the practical features of AGMs in these countries, based on these regulatory frameworks. The Shareholder Rights Directive (2007/36/EC) requires companies to disclose the voting results and to publish this information on their website. This creates an opportunity to examine the functioning of the European AGM in two ways: i) shareholders' attendance,[235] i.e. the decision to attend the meeting and generally vote, or not; and ii) shareholder voting behaviour, i.e. shareholder voting decisions on specific agenda items. With the use of the publications on the companies' websites and other data, we present new evidence on turnout rates and shareholder voting behaviour at AGMs. Afterwards, in the next chapter of this research we use this dataset to empirically examine the attendance determinants of (small) shareholders.

Only a few scholars have investigated shareholder turnout so far. De Jong, Mertens and Roosenboom (2006) studied 245 AGMs of 54 Dutch companies between 1998 and 2002. They find that the shareholder turnout at Dutch AGMs for companies without depository receipts was relatively low with only a 30% average (*cf. infra*, the use of depository receipts is explained in section 5.1.2 of this chapter). Van der Elst (for instance, 2013, 2012, 2011, 1997[236]) has studied shareholder voter turnout in the past years in several studies, often focussing on Belgian companies. In an OECD research paper, Hewitt (2011) studies the shareholder voter turnout in OECD countries (*cf. infra*, section 2 of this chapter). Others, including ISS (Institutional Shareholder Services), also publish voter turnout reports.[237]

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[235] In this study, we use the words 'to participate' and 'to attend' (or 'shareholder attendance' and 'shareholder participation') as synonyms; both wordings include the situations that shareholders either physically attend the again, or vote by proxy or by mail.

[236] Research of Van der Elst and Wymeersch (1997).

[237] In chapter 3 we discuss studies that focus on shareholder turnout and voting behaviour (*cf. infra*, section 2 of chapter 3).

1.1. Outline of this Chapter

This chapter is organised as follows: in the next section, we introduce our sample of companies that are listed in the seven European Member States. In the remaining sections, we outline the empirical framework for our research and provide descriptive findings per category. Section 3 describes the findings for total shareholder turnout and section 4 for small shareholder turnout. In section 5, we examine the ownership structures of the companies in our sample. Afterwards, in section 6 we evaluate shareholder *voting power* separately, because, as we will explain, voting power and ownership stakes may differ significantly. In section 7 we discuss shareholder voting behaviour in AGMs, including dissent rates and the content of the meeting agendas. Section 8 describes the types of shareholders and section 9 evaluates the behaviour of 'outsider' shareholders, i.e., shareholders not considered corporate insiders. Finally, section 10 provides conclusions and discussion of the findings.

2. SAMPLE AND DATA COLLECTION

This study makes (besides other data sources such as *DataStream*) use of hand-collected panel data from the websites of companies listed at the national stock exchanges of various countries in the European Union. We use voting information that is reported in documents disclosed by companies on their websites. These documents include AGM minutes, voting results statements and convening notices. The convening notices usually contain many pages of information, as required by the national laws of the Member States (ex article 5 of the Shareholder Rights Directive), including, *inter alia*, the place and time of the AGM, the proposed agenda, a detailed description of how shareholders can participate and vote in the general meeting, including a description of the shareholders' rights and the proxy voting procedure, the record date, etc. The convening notice must also explain how the documents need to be submitted to the meeting and the draft resolutions can be obtained by the shareholders. In practice, companies often include the draft resolutions in their meeting notices. Disclosure of the voting results statements is also required by the Shareholder Rights Directive (article 14). The Shareholder Rights Directive does not require companies to disclose minutes, but some companies publish them on their websites in accordance with the national corporate governance framework. For example, the Dutch Corporate Governance Code (DCGC 2008) requires companies to provide their shareholders with reports of the general meetings (principle IV.3.10 of DCGC 2008; principle 4.1.10 DCGC 2016). Accordingly, many Dutch companies disclose extensive minutes of the general meetings on their websites. In addition to these documents, we also use ownership structure data provided in the company annual reports and national registers.

We use the data of companies that are listed to the main indices in the UK (FTSE-100), the Netherlands (AEX-25), France (CAC-40), Germany (DAX-30), Austria (ATX-20), Belgium (BEL-20), and Ireland (ISEQ-20) over a period of five years since the implementation of Directive 2007/36/EC (2010-2014). According to ISS reports in 2010 and 2011, not all firms in all European countries disclose (complete) information about voting results on their websites. This may come as no surprise, as there is no sanction for not disclosing this information (also see Cremers, 2011). ISS observes some big differences when analysing the available information; whereas in 2010 in Denmark, only 23.5% of the companies disclose the required information (OMXC-20), for example in Belgium (BEL-20), Norway (OBX-25) and Luxembourg (Lux-X) all companies disclose this information for this year. In its 2011 report, ISS reports a 62.5% disclosure rate for

Luxembourg (Lux-X), 100% for (amongst others) Ireland (ISEQ General), UK (FTSE 350) and Greece (ASE-20) and 97.5% for the Netherlands (AEX-25 and AMX-25).[238] Although Member States were obliged to implement Directive 2007/36/EC by August 2009, some Member States did not fulfil this obligation in a timely fashion. For example, for the Netherlands, this Directive was implemented through the *Wet Ter Implementatie van de Richtlijn Aandeelhoudersrechten*, which went into effect on July 1, 2010 (*cf. infra*, chapter 4 of this research). In contrast, the UK managed to transpose the Shareholder Rights Directive in a timely manner. Moreover, under the UK CA 2006, firms were already required to publish the result of any voting poll on their websites, although not in as much detail as described in the Directive.[239] But late implementation does not fully explain why not all firms publish the results of their voting polls. For example, in Belgium, the Shareholder Rights Directive was implemented in January 2012 (*cf. infra*, chapter 4), but Belgian companies had to disclose information related to the AGM as of April 2010 following the BCGC (Van der Elst, 2013). Van der Elst (2013) reports an increasing disclosure of Belgian firms in the period 2007-2012, but notices that approximately 1 out of 5 firms in Belgium still does not comply with the regulation for the year 2012.

Comparison of ISS's findings with Hewitt's report (2011) amply illustrates that voter turnout rates reported by scholars may substantially depend on sample selection. Hewitt collects data using a 'minimum of thirty meetings over the last two financial years [2009 and 2010] per country […] by selecting companies that were incorporated and in the main listing segment in the country in question' (p. 8). At first sight, the findings might look similar to the ISS reports, but a closer look at the percentages reported for specific years reveals discrepancies of around 6% or more (the Netherlands, Portugal and Finland for example). This difference indicates that a sound reporting of sample selection in this kind of studies important.

When collecting the data for this research,[240] we saw that although many firms disclose the required information for the year 2014, the information for previous years was sometimes no longer available. Consequently, e imposed the following sample requirements: i) the company must belong to one of the aforementioned indices in one or more years between 2010 and 2014, and ii) AGM information, including voter turnout and voting behaviour, and ownership information need to be available for the company for the complete period 2010-2014. In case the company belongs to more than one of the seven indices, the location of the company's registered office of the company determines to which country it belongs in our sample. For example, Delta Lloyd NV is part of the AEX-25 and Bel-20. Since it has its registered office in Amsterdam, the Netherlands, Delta Lloyd NV is considered a Dutch company in our sample. Gemalto NV was listed to the AEX-25 and CAC-40; since this company also has its registered office in Amsterdam it is also considered a Dutch company. Companies with a dual structure, i.e., Reed Elsevier Plc and Reed Elsevier NV (currently named 'RELX'), and Unilever Plc and Unilever NV, are included in the sample for both the UK and the Netherlands.

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238 ISS 2011 and ISS 2010.

239 In chapter 1 of this research we have seen that around 10% of the FTSE-100 AGMs in our sample used 'show of hands' voting method. However, one may note that the UKCGCG stipulates that where a vote has been taken on a show of hands, companies also need to disclose the amount of votes in favour, against and withheld (rule E.2.2). Few companies in our sample only disclosed their proxy voting results. Since usually only a (insignificantly) small part of the shareholders physically attends AGMs, these proxy voting results provide us important information about the voting results.

240 The data collection mostly took place in the end of 2014 and the beginning of 2015.

Our initial sample consisted of 279 companies, but not all companies disclose complete AGM information for our five-year period on their websites.[241] We contacted the investor relations departments of the companies for the missing information, and deleted the companies from our sample if the information was unavailable or we failed to get a response from the investor relations departments. Our final sample contains data for 251 companies over five years, which brings the number of repeated AGM observations to 1,255. An overview of the sample is provided in table 1:

TABLE 1

The sample

Country	**Number of companies**	**Number of AGMs**
Austria	22	110
Belgium	17[242]	85
France	37	185
Germany	32	160
Ireland	18	90
Netherlands	24	120
UK	101	505
Total	*251*	*1,255*

Most of the companies in our sample are in industrial goods and services (39 companies). Other popular super-sectors are insurance and banks, with 19 and 15 companies respectively. Only one company is in the equity/non-equity investment instruments business. The complete list of companies can be found in the appendix to this chapter. For France, we report all resolutions of the combined general meetings (both ordinary and extraordinary resolutions). And for Belgian companies, we report both the voting results from the ordinary general meetings and the extraordinary meetings in case these two meetings take place on the same day and at the same location: the extraordinary meeting usually takes place right after the ordinary one and hence, the distinction is a legal formality, similar to France's (*cf. supra*, chapter 1).[243] During these 1,255 (combined) AGMs over 21,000 resolutions were put to a shareholder vote.

3. TOTAL SHAREHOLDER VOTER TURNOUT

3.1. Methodology

We defined total shareholder turnout, denoted by TURNOUT, as follows:

[241] Of these 28 companies, 3 companies are AEX-25 companies, 3 companies are CAC-40 companies and 3 companies are BEL-20 companies. The remaining 19 companies were (or still are) either part of the FTSE-100 or the ISEQ General.

[242] For Befimmo NV we recorded the results of the 2011 EGM that was held on 22 June, 2011. For GBL NV (Groupe Bruxelles Lambert) the shareholder voter turnout of the 2010 AGM was not disclosed. We contacted the investor relations department but did not get a response.

[243] Unfortunately, there are no voting results reported for the 2012 and 2014 EGM of Elia NV, nor for the 2010 EGM of Telenet NV.

TURNOUT
= (Total Number of Votes Casted)/(Total Amount of Votes Outstanding)
* 100%,

where the total amount of votes outstanding is corrected for treasury shares: since we investigate the actual attendance behaviour of (small) shareholders, the reported voter turnout and stakes in this research are corrected for treasury shares if possible. Treasury shares are shares held by the company itself, and the voting rights attached to them cannot be exercised.[244]

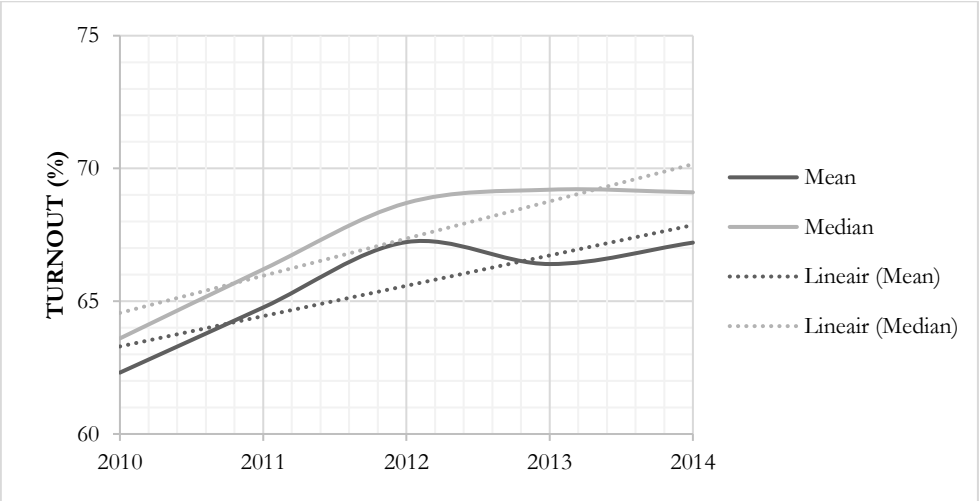
3.2. Descriptive Analysis

Total voter turnout differs widely across the 251 companies in the sample. The mean or average voter turnout for all companies in the sample is 65.6% with a standard deviation of 14.8%. The median voter turnout is slightly higher than the mean with 67.6%. Since the median voter turnout is higher than the average voter turnout the distribution is somewhat skewed to the right; there are more values larger than the average value, but the values that are smaller than the average value are (much) lower. The lowest voter turnout is measured for the AGM in 2010 for the Austrian company CA Immobilien Anlagen AG and amounts to 15.2%, whereas the highest voter turnout is almost 100% for ING NV between 2010 and 2014. ING NV has issued depository receipts (*cf. infra*, section 5.1.2 of this chapter) for almost all shares with voting rights, and ING's trust office votes with all shares for which depository receipt holders have not requested proxies. The voter turnout for Allied Irish Banks Plc was also remarkably high at first sight with 99.8%, but the National Pensions Reserve Fund Commission (Irish government) holds 99.8% of the shares in Allied Irish Banks Plc; at the end of 2010 Allied Irish Banks Plc was effectively nationalized by the Irish Government. The mean and median of the voter turnout shows an increasing trend:

[244] In France, some companies report the number of voting rights including and excluding treasury shares on their website. For other companies, we used information retrieved from annual reports, meeting notification documents, and other disclosure documents. In case treasury shares were included in the total number of voting rights reported by the company, the number of treasury shares was deducted from total voting rights. Since it is important to take into account that some voting results disclosures include treasury shares when reporting the number of voting rights present at a meeting, the actual submitted votes (votes in favour, votes against, votes withheld etc.) are summed where possible, to take into account only the shareholders that can actual vote.

FIGURE 1

TURNOUT (%)



Year	**2010**	**2011**	**2012**	**2013**	**2014**
mean TURNOUT (%)	62.3	64.8	67.2	66.4	67.2
median TURNOUT (%)	63.6	66.2	68.7	69.2	69.1

The mean voter turnout per country over these five years differs substantially (figure 2). In Belgium, the mean voter turnout over five years is the lowest with 52.5%, whereas in the UK and Ireland, the mean voter turnout is 70.4 and 69.0%, respectively. France reports the highest voter turnout of continental Europe on average with a percentage of 66.2, closely followed by the Netherlands with 63.9%. Austria has a mean voter turnout of 61.6% and the average voter turnout of Germany is 58.6%. The mean and median voter turnout differ the most in Belgium: whereas the mean is only 52.5%, the median voter turnout is 57.4%. This discrepancy indicates that there are more observations with a higher voter turnout than 52.5%, but the observations with a lower voter turnout than the mean have a (much) lower value. A one-way ANOVA shows that the mean voter turnout is significantly higher in 2011 compared to 2010 (statistically significant at the 10% level), the mean voter turnout is significantly higher in 2012 compared to 2011 (also at the 10% level). The means in other subsequent years were not statistically significantly different.

FIGURE 2

TURNOUT per Country (%)

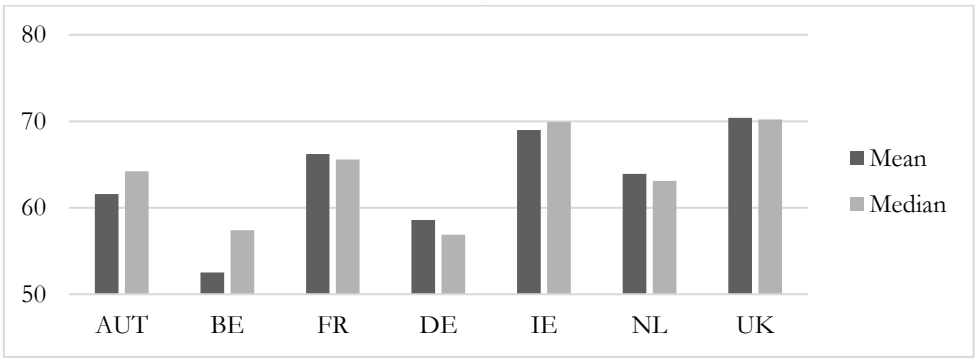


Table 2 shows the trend of average voter turnouts per country over 2010-2014. Belgium reported the lowest voter turnout in 2010, 2011 and 2012, but in 2013 and 2014, average total voter turnout was lower in Germany. Either the UK or Ireland reported the highest total turnout in every year.

TABLE 2

TURNOUT per country per year (%)

Year	Austria	Belgium	France	Germany	Ireland	Netherlands	UK
2010	58.3	46.4	63.2	59.8	59.9	56.8	67.9
2011	58.8	45.8	67.7	59.4	66.5	62.9	70.0
2012	60.8	54.4	68.3	62.2	72.9	64.8	71.6
2013	65.1	56.3	65.4	53.6	73.2	66.8	71.6
2014	65.1	59.2	66.3	57.9	72.3	68.3	71.1

In France and Germany total voter turnout decreased from 2012 to 2013. Whereas in France this difference is only 3.4%, in Germany this decrease is substantial at 8.6%. In 2014, the mean voter turnout decreased in Ireland (0.9%) and in the UK (0.5%). Over the reported period, the voter turnout of the Netherlands and Ireland experienced the largest growth: 11.5% in the Netherlands and 12.4% in Ireland. There was a large jump in shareholder turnout in the Netherlands in the 2010-2011 period; the Shareholder Rights Directive was implemented in Dutch law prior to the 2011 AGM season, which may have caused this increase (we will explore whether there is a causal link in chapter four). Similarly, we observe a sharp increase in Belgian turnout rates in 2012, which was the first year Belgian companies needed to comply with the implemented provisions from the Directive (*cf. infra*, chapter 4). If we exclude the Dutch companies Fugro and ING, which did not list (almost) all their shares but issued non-voting depository receipts (*cf. infra*, section 5.1.2 of this chapter), and thus accordingly had a turnout of over 99%, the average voter turnout of Dutch AEX-companies was only 60.7% over the 5-year period. Nonetheless, this is still higher than the average voter turnout in Germany and Belgium.

In some cases, turnout rates were clearly significantly higher in one country than in the other country. For instance, the turnout rates in Belgium were significantly lower than in the UK for all years. In other cases, it is less clear whether significant differences exist. When we compare the means for the Netherlands and Ireland using a one-way ANOVA (or a two-sample *t* test) we note that these mean turnout rates were only significantly different for the year 2012 (but only at the 10% level). Similarly, we conducted tests for the other combinations of countries and found the following results (table 3):

TABLE 3

One-way ANOVA TURNOUT (%)

Year	AUT & BE	AUT & DE	FR & DE	FR & NL	FR & IE	FR & UK	IE & NL	IE & UK	UK & NL
2010	3.10†	not sign.	not sign.	not sign.	not sign.	5.43*	not sign.	8.47**	15.08***
2011	4.68*	not sign.	7.43†	not sign.	not sign.	not sign.	not sign.	not sign.	7.25**
2012	not sign.	not sign.	3.68†	not sign.	not sign.	3.06†	3.19†	not sign.	7.42**
2013	not sign.	4.31*	7.64**	not sign.	3.94†	9.09**	not sign.	not sign.	3.72†
2014	not sign.	not sign.	6.22*	not sign.	3.47†	7.86**	not sign.	not sign.	not sign.

Note: the table reports the F-ratios. The notion 'not sign.' means that there was not significant difference between the two means.

†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Table 3 shows that voter turnout means for the UK and Ireland were not statistically significantly different (except for the year 2010). In contrast, turnout rates in the UK were significantly higher than in all the other continental European Member States in our sample. The voter turnout rates for, for example, the Netherlands and France are rather similar, but compared to Germany, the voter turnout rates in France were significantly higher. Turnout rates in Belgium and Austria also did not differ significantly in the period 2012-2014.

3.3. Concluding Remarks

In sections 3.1-3.2 we discussed the descriptives of total shareholder turnout in the seven Member States. We have seen that shareholder turnout rates are increasing in the 2010-2014 period in all countries, but the rates differ largely. Interestingly, a large jump can be noted in turnout rates after the introduction of the Shareholder Rights Directive at the national level in the Netherlands, France and Belgium. In chapter 4 of this research we explore whether this increase may have a causal explanation.

4. SMALL SHAREHOLDER VOTER TURNOUT

4.1. Methodology

In order to determine small shareholder turnout rates, we need to define which part of the total shareholder turnout rate belongs to the small shareholders. We define small shareholders as all shareholders who are not blockholders. A blockholder is defined as a shareholder – or a group of shareholders who explicitly act in concert under a disclosed shareholder agreement – that holds at least 5% of all voting rights. The 5% cut-off point is in line with the lowest disclosure threshold in the Transparency Directive. Since not all Member States have implemented additional lower thresholds, 5% is the lowest common threshold in our sample. ISS and Van der Elst (2011) also use this threshold to distinguish small shareholders from blockholders.

Companies are only obliged to disclose the total voting results under European law. Hence, we need a method to identify whether small shareholders attended the meeting. Van der Elst (2011) recognizes this problem, and assumes that blockholders always attend the AGM. This assumption enables the calculation of small shareholder turnout rates. Large shareholders generally have significantly more incentives to vote than small shareholders since they will receive a larger share of the benefits of better monitoring. Their voting costs will also be relatively lower under the

assumption that the costs of voting with one share are the same as the costs of voting with multiple shares. Moreover, large shareholders are 'locked-in' since easily selling their stakes without adversely affecting the share price is usually impossible. As a result, these large shareholders have to deal directly with the corporate management, for example through voting at the AGM (Leech, 1987). Van der Elst (2011) finds support for this premise in his data: voter turnout would be much lower without attendance of these blockholders. Attendance lists of several Belgium and Italian companies confirm this assumption. This assumption also correlates with Zetzsche's research (2008). And in its analysis of European shareholder behaviour in 2010, ISS published a graph on the percentage of free-float at shareholder meetings, thereby 'assuming that all important shareholders exercise their voting rights' (p. 18). Although one could argue that it is possible that not all blockholders would vote with all their shares and that there remains some uncertainty about the actual stake of each blockholder, it is still the best available proxy to date to evaluate small shareholder voter turnout.[245] Apart from irrational behaviour or personal incentives there are no convincing arguments to assume that blockholders do not vote with all their shares. In the past, this might have been different due to the use of share blocking, but this behaviour was abolished with the introduction of the Shareholder Rights Directive. One may note that share blocking was still practiced at some Belgian companies in our sample in 2010 and 2011, before the introduction of the Shareholder Rights Directive, which may explain the low attendance rates for Belgian companies in these years (Van der Elst, 2011). In chapter 4 of our research, we will further explore this possibly causal relationship.

Following the assumption that all blockholders attend the AGM, small shareholder turnout can be calculated as (following Van der Elst, 2011, ISS):

TURNOUTsmall
= (Amount of small shareholders present)/(Total amount small shareholders)*100%

= (TURNOUT-Summed voting block of all blockholders)/(100%-Summed voting block of all blockholders)*100%

There is some uncertainty about the actual stakes of blockholders, since blockholders are only obliged to notify their issuer of their stakes in case their stake exceeds or falls below the thresholds defined by law. Hence, the actual stake of a blockholder can differ from the stake that is disclosed when his or her stake increases or decreases without passing another threshold. This unsolvable measurement error is observable for 17 of the 1,255 observations in our sample: for these, the total turnout was smaller than the aggregate disclosed stakes of the blockholders.[246] [247] For these cases we have set the turnout of small shareholders to zero.

[245] One may note that in the US, mutual funds are required to disclose how they vote by their proxies in accordance with the regulations of the SEC (Form N-PX).
[246] BWIN Party Digital Entertainment (2011), Immofinanz (2010), Strabag (2014), Uniqa Insurance Group (2012), Verbund AG (2014), D'Ieteren (2012), KBC Groep (2011), Telenet Group (2010), UCB (2010 and 2011), Umicore (2010), Continental (2010), Deutsche Telekom (2013), Metro ST (2011), Independent News & Media (2010), Easyjet (2010) and GBL (2010).
[247] Another possible explanation is that some of these blockholders did not vote with their entire voting stake for unknown reasons.

Because of the incomplete disclosure of information related to the attendance of shareholders and their votes, there are three possible measurement errors that may be present in our small shareholder turnout analyses:

- We *over*-measure the voting stake of a blockholder at the record date;
- We *under*-measure the voting stake of blockholder at the record date;
- We *over*-measure the amount of votes the blockholder actually uses during the AGM.

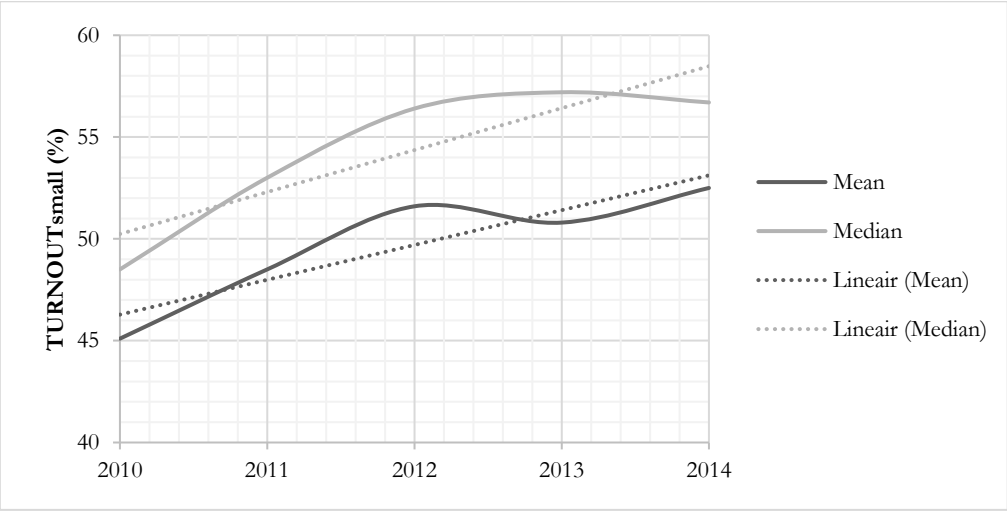
The direction of the aggregate measurement error can go both ways, but since two of the three possible measurement errors lead to an overestimation of the blockholder's voting stake, it may be the case that there is some *underestimation* of small shareholder attendance in more concentrated ownership structures.

4.2. Descriptive Analysis

The mean voter turnout of small shareholders for the whole sample is 49.7% and the standard deviation is 18.1%. The maximum voter turnout of small shareholders is 83.7% for Rio Tinto Plc in 2013. Figure 3 shows the voter turnout trend for small shareholders over the past four years. Again, one may recognize an increasing trend.

FIGURE 3

TURNOUTsmall (%)



Year	2010	2011	2012	2013	2014
mean TURNOUTsmall (%)	45.1	48.5	51.6	50.8	52.5
median TURNOUTsmall (%)	48.5	53.0	56.4	57.2	56.7

The mean voter turnout for small shareholders per country over these five years also differs (figure 4). In Belgium, this percentage is the lowest at 21.3 (and a median of 18.9%) whereas in the UK the mean voter turnout is 62.0%. Austria has the second lowest average small voter turnout of 30.8%. France has the second highest average small shareholder voter turnout with a percentage of 50.9. Ireland reports a mean small shareholder voter turnout of 46.5%, the Netherlands 44.6%, and Germany 43.1%. A one-way ANOVA shows that the mean small shareholder voter turnout is significantly higher in 2011 compared to 2010 (statistically significant at the 5% level), and in 2012

compared to 2011 (at the 10% level). The means in other subsequent years were not statistically significantly different.

FIGURE 4

TURNOUTsmall per Country (%)

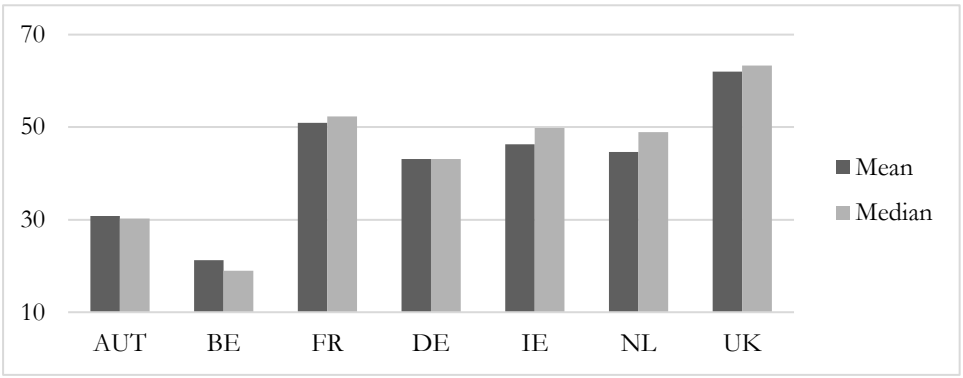


Table 4 illustrates the trend for small shareholder voter turnout by country between 2010 and 2014. As one can see, Belgium displays the lowest small shareholder voter turnout over the course of the whole period. In the UK, the mean small shareholder voter turnout is by far the highest every year. The small shareholder turnout rates for the other countries are more equal: in table 5 we investigate whether these means are statistically different or not.

TABLE 4

TURNOUTsmall per Country per Year (%)

Year	**Austria**	**Belgium**	**France**	**Germany**	**Ireland**	**Netherlands**	**UK**
2010	27.9	9.9	45.2	45.0	41.3	32.5	58.2
2011	26.0	9.5	52.3	45.5	46.0	43.7	61.1
2012	28.9	23.7	53.9	48.2	47.1	45.6	63.7
2013	35.4	30.1	50.8	35.2	49.4	48.5	63.4
2014	35.9	32.5	52.3	41.7	47.8	52.7	63.7

The substantial decrease of 13% in voter turnout of small shareholders for Germany in 2013 is remarkable, but we did not find any reasons for this significant decrease. Note that total shareholder voter turnout also decreased substantially, by with 8.6%, that year (*cf. supra,* table 2). Furthermore, one may note that after the implementation of the Shareholder Rights Directive small shareholder turnout substantially increased in the Netherlands (2010-2011), France (2010-2011) and Belgium (2011-2012): we will explore whether there is a causal link in chapter 4 of this study. In Austria, too, small voter turnout soared, from 28.9% in 2012 to 35.4% in 2013.

We can also compare the means of small shareholder turnout rates among countries using a one-way ANOVA. Table 5 shows the findings:

TABLE 5

One-way ANOVA TURNOUT (%)

Year	AUT & BE	AUT & DE	FR & DE	FR & NL	FR & IE	FR & UK	IE & NL
2010	20.64***	18.72***	not sign.	14.41***	not sign.	37.30***	not sign.
2011	18.47***	23.19***	5.26*	7.39**	3.14†	22.63***	not sign.
2012	not sign.	24.00***	3.84†	6.65*	3.41†	31.80***	not sign.
2013	not sign.	not sign.	16.94***	not sign.	not sign.	38.71***	not sign.
2014	not sign.	not sign.	15.68***	not sign.	not sign.	59.19***	not sign.

Note: the table reports the F-ratios. The notion 'not sign.' means that there was not significant difference between the two means.
†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Table 5 shows that statistically, the mean small shareholder turnout rate is significantly larger in the UK than in France for all years (this is also the case for all other countries in the sample, not reported in table 5).

4.3. Concluding Remarks

We have seen the descriptives of small shareholder turnout in section 4.2, using the formula that was determined in section 4.1. Although it should be considered that our measure remains a proxy, we can conclude that there are some substantial differences among the seven Member States. In the UK, small shareholder turnout rates are relatively high, with around 60%, whereas especially in Belgium and Austria small shareholder turnout rates are significantly lower. In most the countries in our analysis, small shareholder turnout rates have increased significantly over the years. This implies that, in contrast to economic theory, a significant share of the small shareholders do vote (*cf. infra*, section 10.2 for a further discussion). In the next chapter, we explore small shareholders' voting determinants. Note that also in case of the small shareholder turnout rates a large jump can be noted in turnout rates after the introduction of the Shareholder Rights Directive at the national level in the Netherlands, France and Belgium (*cf. infra*, chapter 4).

5. CORPORATE OWNERSHIP STRUCTURES

5.1. Methodology

In the introduction chapter of this study we covered have considered ownership structure as an important element in corporate governance. In this section, we study the practical characteristics of ownership more closely. We retrieve the ownership structure data from the annual reports that are published prior to the shareholder meetings, but, if available, also from national authorities such as the AFM (financial supervision authority of the Netherlands, in Dutch: *Autoriteit Financiële Markten*).

As we have seen with the calculation method of small shareholder turnout, the lowest common disclosure threshold for the countries in our sample is 5% as a result of the Transparency

Directive.[248] Moreover, due to the very large number of small shareholders in most listed firms and the existence of bearer shares, information on stock ownership is necessarily incomplete. Leech recognizes this 'Problem of Incomplete Information' (Leech, 2002, p. 11). To overcome this problem, ownership measures and voting power indices in our research are calculated under the assumption of unknown theoretical small shareholders with 1% of the voting rights each. All small shareholders are considered symmetric, which implies that the maximum number of shareholders of a company would be 100 in this study; this is the case for observations for which no disclosures of voting stakes have been reported. Although this method of calculation implies a simplification of the real situation given that there are very large numbers of small shareholders in most listed firms, this simplification is the best proxy available for our purposes.

Since this research investigates the actual amount of voting rights shareholders have, the reported stakes in this section are corrected for treasury shares for every year, in agreement with the reporting requirements of most countries in our sample. Many French companies report the number of voting rights excluding treasury shares on their websites, which made it easy to correct for these non-voting shares. For other companies, we used information retrieved from annual reports, the notification documents of the meetings and other disclosure documents. Ownership disclosure in the Netherlands differs from other European countries in two respects for our sample period: i) the Dutch financial market authority AFM also includes short positions in substantial shareholding disclosures, and ii) depository receipts are also included in these substantial shareholding disclosures.[249] [250] The AFM reports the short positions separately. We can therefore quite easily deduct these from the reported voting stakes.

5.1.1. Ownership Measures

We use the following notation for the ownership measures in this chapter: the percentage stakes of the shareholders are denoted in size order w_1, w_2, ..., w_N, where $w_i \geq 1\%$ for all i – following our assumption that the smallest shareholder holds a 1% stake – and $\sum w_i = 100\%$, the total number of shareholders being N. We use the voting block (%) of the largest shareholder (C1), the concentration ratio of the two largest shareholders (C2), the concentration ratio of three largest shareholders (C3). The concentration ratio Cx simply measures the percentage of the votes held by the x largest shareholders in a company. It can be calculated as follows: $Cx = \sum_{i=1}^{x} w_i$, where w_i is the percentage of votes held by shareholder i. We use the summed voting blocks of all blockholders (BLOCK) as well.[251] In addition, we also use the Herfindahl-Hirschman index (HHI),

[248] It is possible that the number of votes in practice differs from the disclosed information. This difference is necessarily smaller than the difference between two consecutive disclosure thresholds. In some Member States, the first threshold of 5% is lowered or additional disclosure thresholds are used. For a detailed description of the thresholds in the Member States, one may refer to section 4.2 of chapter 1.

[249] Just like we assume that blockholders exercise their voting rights during AGMs, we also assume that blockholders of depository receipts either request proxies or give a binding voting instruction to the trust office that holds the shares.

[250] With the implementation of Directive 2013/50/EU, disclosure of voting rights arising from holdings of financial instruments that have similar economic effects to holding shares is also required in the other Member States (generally introduced in 2015 in the national laws and hence, not applicable to our empirical analyses in chapters 2-4).

[251] In case no holdings in voting rights were reported, i.e. the shareholder structure only consists of small shareholders, C1 takes a value of 1, C2 a value of 2 and C3 of 3. In contrast, BLOCK will have a value of zero.

which can be calculated as: HHI $= \sum_{i=1}^{n} w_i^2$, where w_i is the percentage of votes of shareholder i and N is the total number of shareholders,[252] and the ratio the second largest shareholder to the largest shareholder (R12).[253]

In addition to the concentration ratios and the HHI, we also use a measure that we name 'R12' (following the measure '*First/Second*' by Overland, Mavruk and Sjögren, 2012) which illustrates the difference between the stake of the largest and second largest shareholder as a percentage, calculated as:

R12 (%)
= (stake second largest shareholder)/(stake largest shareholder)*100%

If R12 is close to 0%, the largest shareholder's stake is significantly larger than the second largest stakeholder's and he or she will have a significant voting power; if R12 is close to 100%, the stakes of the two largest shareholders do not differ substantially and their voting power will be more equal.

5.1.2. Control-Enhancing Mechanisms

Becht and Barca (2001) argue that an analysis of voting rights of corporations is complex since there are often coalitions, voting agreements and pyramid structures involved. Cash flow rights and voting rights do not have a one-to-one ratio in every company. For example, as we have seen in chapter 1 of this research, in France many companies used to offer double voting rights to long-term shareholders, also prior to the implementation of the Florange law. Shareholders can also form coalitions in order to pass or block a resolution. These coalitions can also be formed prior to the AGM with the use of shareholder agreements. Pursuant to article 10(1)(g) of the Takeover Directive (2004/25/EC), listed companies must publish these shareholder agreements. Article 10(2) states that that agreements that impose restrictions on voting rights or the transfer of shares must be disclosed in the annual report. Therefore, to completely understand a company's shareholder structure and the voting power of its shareholders, these shareholder agreements must be considered.[254] According to the 'Report on the Proportionality Principle in the European Union' conducted by Shearman and Stearling, ISS, and ECGI (2007), '[s]hareholders' agreements are generally considered to be at the core of the freedom of contract […]. This CEM [Control-Enhancing Mechanism] is thus legally available in […] all the countries that participated in this Study […] [and] are most common in Italy and Belgium' (p. 22). This report chronicles how 23 of the large companies[255] in its sample have disclosed shareholder agreements, including the Belgian

[252] One may note that the maximum value of the HHI index is 1 (one shareholder holds 100% of the votes, i.e. 1^2), and the minimum value in this research is 0.01 (as the smallest shareholder has a stake of one percent). HHI is commonly used in competition law to measure the concentration in a specific market.
[253] In case only one shareholder's stake is reported, the second largest shareholder is assumed to hold 1% of the votes. When no stakes are reported, *R12* takes a value of one.
[254] Unfortunately, our analysis is limited to the disclosure of these agreements in annual reports. We thus cannot completely exclude the possibility that some (tacit) agreements are not disclosed in the annual report, for example, if the company is not aware of them. Also, one needs to note that Directive 2004/25/EC focuses on takeover situations.
[255] This report studies the 20 largest companies of 16 EU countries and also considers some small and recently listed companies.

companies Bekaert, Colruyt, InBev and KBC, the French companies AXA, L'Oreal and BNP Paribas and the Irish company Dragon Oil. Shareholders that act in concert during AGMs following a shareholder agreement are considered as one blockholder. For example, in the Belgian company Colruyt NV, the Colruyt Family and Groep Sofina act together 'by mutual agreement'[256] and together hold almost 56% of voting rights.[257] There are no other shareholdings reported in the annual report. Hence, in our analysis we consider Colruyt to have one blockholder holding almost 56% of the voting rights. Another example is Strabag AG. The main shareholders of Strabag AG (Austria) are Raiffeisen NÖ-Wien Group/UNIQA Group, Rasperia Trading Limited and the Haselsteiner Group. There is a syndicate agreement between these large shareholders that provides for supervisory board nomination rights, voting coordination, transfer restrictions and other rights as outlined in the prospectus of 5 October, 2007.[258] Due to this substantial agreement we consider these shareholders one large voting block.

Other agreements limit shareholder voting rights or restrict the exercise of these voting rights. For example, the shareholder Wiener Städtische Versicherungsverein still has the right to appoint up to one-third of the members of the supervisory board if, and so long as, it holds 50% or less of the voting shares of the Vienna Insurance Group.[259] Currently this shareholder holds 70% of the voting capital. Epoch Two Investment and Tarl Investment waived their voting rights on all the shares they hold in Anglo American Plc.[260] These shareholders each have a stake of around 3% of the voting rights in Anglo American Plc.

In Austria, the EIWOG[261] stipulates that the share capital of the *Österreichischen Elektrizitätswirtschafts-Aktiengesellschaft* (*Verbundgesellschaft*) must be at least 51% owned by the Austrian government. With the exception of regional authorities and companies in which regional authorities hold an interest of at least 51%, the voting rights in the AGM are restricted to 5% of the share capital.[262]

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256 Colruyt NV, annual report 2013/14, p. 160.
(<http://www.colruytgroup.com/sites/default/files/financial/annualreports/pdf/SUPER%20LR_CG%20JR2014_ENG_1.pdf>). (accessed in March 2015).

257 We corrected for the non-voting treasury shares, leading to a combined stake of (50.11+5.44)/0.9974=55.7%.

258 Strabag AG Prospectus 5 October 2007, p. 140.
(<http://www.strabag.com/databases/internet/_public/files.nsf/SearchView/DAD2E2AC685D1544C125797C0064B22D/$File/STRABAG-KMG-Prospekt.pdf>). (accessed in March 2015).

259 Vienna Insurance Group, annual report 2013, p. 101. It is stated that: '6. The Managing Board must have at least three and no more than seven members. The Supervisory Board has three to ten members (shareholder representatives). The shareholder Wiener Städtische Versicherungsverein has the right to appoint up to one third of the members of the Supervisory Board if, and so long as, it holds 50% or less of the Company's voting shares. General Meeting resolutions are adopted by a simple majority, unless a different majority is required by law or the articles of association'.

260 Anglo American Plc, annual report 2013, p. 145.
(<http://www.angloamerican.com/~/media/Files/A/Anglo-American-PLC-V2/investors/reports/annual-report2013.pdf>). (accessed in March 2015).

261 *Elektrizitätswirtschafts-und-organisationsgesetz* (EIWOG), *Bundesgesetzblatt* 1998/143, 18 August 1998. Article 2(1)(1) states that: '*Vom Aktienkapital der Österreichischen Elektrizitätswirtschafts-Aktiengesellschaft (Verbundgesellschaft) muß mindestens 51 vH im Eigentum des Bundes stehen. Mit Ausnahme von Gebietskörperschaften und Unternehmungen, an denen Gebietskörperschaften mit mindestens 51 vH beteiligt sind, ist das Stimmrecht jedes Aktionärs in der Hauptversammlung mit 5 vH des Grundkapitals beschränkt.*'

262 Verbund AG has adopted this rule in provision 19(3) of its articles of association. Otherwise each share has one vote. The company has an ownership structure with three large shareholders, holding a stake of 51% (Austrian government), more than 25% (syndicate of state energy companies) and more than

A very particular type of large insider shareholder is the trust office (in Dutch: *stichting administratiekantoor,* or simply '*STAK*'). Some Dutch companies do not list (all) their shares but issue non-voting depository receipts. The shares are issued to a trust office that is the legal owner of the voting rights, and holders of non-voting depository receipts receive financial rights and dividends.[263] Voting rights are thus separated from capital rights. Following article 2:118a DCC holders of those non-voting depository receipts may submit a request to receive proxies, except in takeover situations.[264] Depository receipt holders may also give binding instructions to the trust office. The Transparency Directive (Directive 2004/109/EC) defines shareholders as 'any natural person or legal entity governed by private or public law, who holds, directly or indirectly […] depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts', which means that holders of depository receipts must also disclose information about their major holdings. In this regard, one may also refer to article 5:33(1)(b) Wft, which states that depository receipts are defined as shares for the purpose of chapter 5.3 (that includes disclosure requirements) of this act. Since holders of non-voting depository receipts may request voting proxies prior to general meetings, we need to deduct the percentage of requested proxies from the total voting stake of trust offices in order to determine their voting power during the general meetings. Most of the companies disclose this percentage in the minutes or voting results of the AGMs. For two companies in the sample, Ahold NV and Randstad NV (only in 2014), this information was not disclosed. We therefore assume that the trust offices of these companies are present with their entire voting stake, varying from 6 to 11% of all voting rights. Of the 24 Dutch companies in our sample, 5 companies make use of a trust office.[265] The trust offices of ASML NV were founded in November 2012 and May 2013 with a total stake of around 20%: the depository receipts of these shares are held by Intel, TSMC and Samsung. The trust offices will not exercise their votes unless particular major corporate decisions are made as determined in several shareholder agreements.[266] The minutes and voting

5%(TIWAG-Tiroler Wasserkraft AG), following the 2013 annual report of Verbund AG Kat. A, (p. 39). The convocation of the 2014 AGM states that: '[p]ursuant to Section 19(3) of the Articles of Association, with the exception of regional authorities and companies in which regional authorities hold an interest of at least 51%, the voting rights of each shareholder in the Annual General Meeting are restricted to 5% of the share capital, thus to 17,370,784 votes.' Despite this rule, voter turnout exceeded 78% according to the voting results document of the 2014 AGM since around 272.5 million votes (of in total around 340 million votes) were exercised, which indicates that the Austrian government exercised its entire voting stake during the AGM. Hence, in our analyses we take into account a voting stake of 51%for the Austrian government for Verbund AG. The same holds for the AGMs in previous years.

[263] Nowak et al. (2013), pp. 432-433.

[264] In contrast, the DCGC 2008 (Principle IV.2) provides that the trust office shall issue proxies in all circumstances and without limitation to the holders of depository receipts who so request. The Dutch Code thus prohibits the use of depository receipts as an anti-takeover device (also, DCGC 2016, Principle 4.4).

[265] These companies are Ahold NV, ING NV, Fugro NV, Randstad NV and Unilever NV. Aegon has a large insider shareholder (Vereniging Aegon) but it is not considered to be a trust office (no depository receipts). Other companies use trust offices as anti-takeover devices. For example, the trust office of Wereldhave NV has a 50% potential stake (current name of this trust office is Stichting Preferente Aandelen Wereldhave NV).

[266] These are: i) the authorisation of certain significant share issuances and share repurchases, ii) any amendment to the articles of association that would materially affect the specific voting rights of Intel or TSMC, iii) any significant change in the identity or nature of ASML or its business, iv) the dissolution of ASML, v) any merger or demerger which would result in a material change in the identity or nature of ASML or its business. Annual Report 2014 ASML, pp. 41-50.

results show that the stakes of these trust offices are included in the voter turnout, but not in the voting results. Hence, these blockholders are attending the AGMs of ASML, but are, in accordance with their agreements, not exercising their voting rights.

In addition to these shareholder voting agreements and Dutch depository receipts, the Shearman and Stearling, ISS and ECGI report (2007) also considers other mechanisms that may influence the control rights of shareholders. These include i) shares with more or special voting rights (including golden shares), ii) shares without voting rights, iii) pyramid structures and cross-shareholdings, and iii) voting right and ownership ceilings. We calculate the percentage of total voting rights for shareholders in companies with ordinary shares and multiple voting shares. For example, Unilever NV has four different share classes, and ING NV offers ordinary shares, 7%-cumulative preference shares and 6%-cumulative preference shares. We calculated ING's total voting stake to be 11.7% following the information in the annual report 2013.[267] We also take into account ownership ceilings. For example, Aegon NV's annual report explains that '[t]he Voting Rights Agreement entered into between Vereniging Aegon and Aegon ensures that under normal circumstances, i.e. except in the event of a Special Cause, Vereniging Aegon will no longer be allowed to exercise more votes than is proportionate to the financial rights represented by its shares'[268]. Under normal circumstances, when Vereniging Aegon may only cast one vote for every 40 common shares B, the voting stake of Vereniging Aegon amounts to 14.6%.[269] There was no 'special cause' during the AGM and thus we recorded that Aegon's largest blockholder had a stake of 14.6%.

Lastly, we consider pyramid structures when determining the ultimate shareholder. For example, the Heineken family is the ultimate owner of Heineken (holding 88.7% of L'Arche Green NV, which holds a 51.6% stake in Heineken Holdings, which in turn holds a 50.0% stake in Heineken NV, data from 2014). FEMSA is an allied shareholder of the Heineken family. Although it is not explicitly stated in Heineken NV's annual report that these shareholders vote in concert, these shareholders have entered a corporate governance agreement that places a 20% cap FEMSA's shareholding. Moreover, Eumedion classifies both shareholders as insiders that clearly support management proposals.[270] Another example of a pyramid structure is Rio Tinto Plc. The largest shareholder of Rio Tinto Plc is Shining Prospect. The annual report reports a voting stake of 12.7%

(<http://www.asml.com/doclib/investor/annual_reports/2014/asml_20150211_Annual_Report_2014_on_Form_20-F.pdf>). (accessed in March 2015). See also Abma (2012).

267 Unilever, annual report 2013, p. 51. We also corrected for treasury shares. (<http://www.unilever.com/images/Unilever_AR13_tcm13-383757.pdf>). (accessed in March 2015).

268 Aegon, annual report 2013, p. 110.
(<http://corporatereporting.aegon.com/2013/userfiles/pdf/Aegon-Annual-Report-2013.pdf>).
(accessed in March 2015). A Special Cause include: '[t]he acquisition by a third party of an interest in Aegon N.V. amounting to 15% or more; [a] tender offer for Aegon N.V. shares; [and] [a] proposed business combination by any person or group of persons, whether acting individually or as a group, other than in a transaction approved by the company's Executive and Supervisory Boards'.

269 Aegon, annual report 2013, p. 309.
(<http://corporatereporting.aegon.com/2013/userfiles/pdf/Aegon-Annual-Report-2013.pdf>).
(accessed in March 2015).

270 Eumedion is a Dutch corporate governance forum for investors, and represents approximately 70 institutional investors. For more information, one may refer to: <www.eumedion.nl>. Eumedion calls these shareholders *gelieerde aandeelhouders* (translation: allied shareholders) in its yearly report on Dutch AGMs. Eumedion (2011).

for this shareholder.[271] Shining Prospect is an investment vehicle owned by Chinalco (Aluminium Corporation of China), a state-owned Chinese enterprise. Hence, the government of China is the ultimate owner of the 12.7% voting stake in Rio Tinto Plc.

5.2. Descriptive Analysis

Table 6 shows that, on average, large shareholders have the largest voting stake in Austria, closely followed by Belgium (denoted by 'C1'). The average voting stake of the second largest shareholder in Austria is substantially larger than in Belgium (Stake2), which indicates that the shareholder structure in Austria is relatively more symmetric. The average stake of the third shareholder in Austria is also relatively large. The UK reports an average largest stake of 15.6%, which is substantially lower than other average largest stakes. The standard deviation of the largest average voting stake is the largest for Ireland with 25%. These findings on the differences in ownership structures are in line with older research of, *inter alia*, Frans and Mayer (1995), Becht and Barca (2001), La Porta et al. (1997, 1998, 1999) and Van der Elst (2011).

Allied Irish Banks Plc (Ireland) reports in 2012, 2013 and 2014 a voting stake of 99.8% for the National Pensions Reserve Fund Commission, controlled by the Irish government. This is the largest voting stake in the complete sample. In France, the largest stake reported is 84.6% by EDF S.A. in 2010; the shareholder is the French state. Uniqa Insurance Group AG (Austria) reports an aggregate stake of 91.1% for the blockholders Raiffeisen Zentralbank, Austria Privatstiftung and Collegialität Versicherungsverein Privatstiftung in 2013.[272] In the UK Fresnillo Plc reports a stake of 77.1% for its shareholder Penoles. In Germany, the largest stake is reported by MAN SE; Volkswagen is its largest shareholder with a stake of 75.3%. In Belgium, D'Ieteren SA reports the largest stake of 65.2%, which is the sum of the stakes of the SPDG Group, the Nayarit Group and Cobepa SA since these shareholders act in concert.[273] In the Netherlands, the largest stake is reported by Fugro in 2010. During this meeting, the Fugro trust office present with 63.5% of the voting rights.

Variables C2 and C3 in table 6 show the average concentration ratios of the two and three largest shareholders, respectively.[274] The total voting block is defined as the sum of all shareholdings that are equal to or larger than 5% of the voting rights excluding treasury shares (BLOCK).[275] The mean voting block of the whole sample is 28.7% with a standard deviation of 21.9%. Table 6 shows the mean voting blocks of the seven countries; Austria reports the highest mean voting block of 45.1%. Table 6 also displays the average concentration ratios of the two and three largest shareholders (not limited to stakes that are higher than 5%).

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[271] Rio Tinto, annual report 2014, p. 222. (<http://www.riotinto.com/documents/RT_Annual_report_2014.pdf>). (accessed in March 2015).

[272] Following the annual report there is a shareholder agreement between these blockholders that binds these shareholders to voting commitments. Annual report Uniqa Insurance Group AG, p. 76 (<http://www.uniqagroup.com/gruppe/versicherung/media/files/V5_20130410_Uniqa_EN_ONLINE.pdf>). (accessed in March 2015).

[273] For example, one can refer to the Annual Report 2012 of D'Ieteren, Note 29: Equity, p. 58.

[274] Calculated as $Cr_x = \sum_{i=1}^{x} s_i$. In case no holdings in voting rights are reported, i.e. the shareholder structure only consists of small shareholders, C2 takes a value of two and C3 a value of three.

[275] The variable 'BLOCK' is the concentration ratio for all shareholders with a stake of 5% or more (blockholders), calculated as: $Cr_x = \sum_{i=1}^{x} s_i$, where $s_i \geq 5$. 'BLOCK' will take a value of zero in case no holdings in voting rights are reported.

TABLE 6

Shareholder structure (reported in %, number of observations for C1, Stake2 and Stake3 between parentheses)

Country	C1	Stake2	Stake3	C2	C3	BLOCK
Austria	37.6 (110)	9.9 (67)	5.2 (36)	43.6	45.3	45.1
Belgium	36.7 (85)	6.1 (54)	4.0 (31)	40.6	42.0	39.8
France	24.4 (185)	7.0 (154)	4.2 (102)	30.0	32.5	30.0
Germany	23.0 (159)	5.9 (117)	4.7 (86)	27.3	29.8	27.4
Ireland	26.5 (90)	8.8 (79)	5.4 (65)	34.3	38.1	37.6
Netherlands	22.5 (116)	6.7 (95)	4.9 (62)	27.1	29.6	28.4
UK	15.6 (505)	6.0 (477)	4.7 (386)	21.2	24.8	21.7

Both the average stake of the largest shareholder (C1) and the voting block (BLOCK) for the complete sample slightly decreased between 2010 and 2014; C1 was 22.9% in 2010, and 21.5% in 2014. The voting block decreased from 28.6% to 28.0%. We conducted paired samples T-tests to see whether these averages were significantly different. Both tests did not show significant results, which indicates that the slight decrease in largest average voting stake and voting block is not significant.

Table 7 shows the Herfindahl-Hirschman index (HHI) for the companies in our sample. The theoretical maximum value of the HHI is 10,000 (absolute percentage value); this is the case when there is one shareholder who owns all voting rights (extremely concentrated situation). A relatively low HHI indicates a low concentration of ownership. According to the HHI values, Austria has the highest ownership structure concentration, closely followed by Belgium. The ownership concentration in UK is substantially lower than in the other Member States.

TABLE 7

Herfindahl-Hirschman Index[276]

Country	HHI	HHI3	HHI5
Austria	2,019	2,019	2,015
Belgium	1,759	1,759	1,748
France	1,090	1,085	1,073
Germany	949	947	935
Ireland	1,463	1,462	1,441
Netherlands	881	880	869
UK	604	604	568

[276] HHI is calculated as $H = \sum_{i=1}^{N} s_i^2$, taking into account the stakes of all shareholders and where the unknown stake of the small shareholders is ε, which is approximately zero; HHI3 is calculated as $H = \sum_{i=1}^{N} s_i^2$, taking into account the stakes of all recorded shareholdings of 3% or more and where the unknown stake of the small shareholders is ε, which is approximately zero; HHI5 is calculated as $H = \sum_{i=1}^{N} s_i^2$, taking into account the stakes of all blockholders and where the unknown stake of the small shareholders is ε, which is approximately zero.

Table 8 shows the mean numbers of the R12 ratio (%). The mean R12 ratio for all companies in the sample is 47.9%, with a standard deviation of 33.1%. If one takes a closer look at the R12 at the country level, one can conclude that the average voting power of the largest shareholder is different by country. Whereas in Belgium the average R12 is the lowest, namely 24.2%, in the UK this percentage is the highest with 60.4%. In France and Ireland the R12 is 43.7% and 48.8% respectively. In Germany, the mean R12 is 38.6% and in Austria 30.9%; the Netherlands reports an average R12 of 45.5%.

TABLE 8

R12

Country	**R12 (%)**
Austria	26.7
Belgium	24.2
France	43.7
Germany	38.6
Ireland	48.7
Netherlands	45.5
UK	60.4

From these results one can conclude that the stakes of the largest and second largest shareholder in the UK are more symmetric than in other countries. In Belgium, the stake of the largest shareholder is on average four times higher than the stake of the second largest shareholder. Comparison of these outcomes to the average largest stakes by country yields the following insight: the average largest stake in France is 24.4%, which is larger than the mean stake of 23.0% reported in Germany; however, the R12 in France is 43.7% compared to 38.6% in Germany, which indicates that the absolute stake of the largest shareholder in Germany is on average smaller, but its average relative stake compared to the second largest shareholder is larger. The same holds for Ireland with an average largest reported stake of 26.4% and an average R12 of 48.7.[277]

5.3. Concluding Remarks

As expected from previous research (for example, La Porta et al., 1998, 1999, 2008) the ownership structures of companies listed in continental European countries are more concentrated than ownership structures of UK companies. The HHI shows that ownership structures are relatively concentrated in Austria and Belgium. Note that, although ownership is often considered quite concentrated by scholars in the Netherlands, the Netherlands has the lowest ownership concentration of all continental European countries in our sample. However, it can be noted that we only obtained results for the largest companies in the Netherlands, and this may not be generalizable to smaller listed companies. Next, not only ownership stakes are less concentrated in the UK, the R12 measure also shows that stakes are more symmetric; for Austria and Belgium, we recorded the largest difference in ownership stake between the largest and second largest shareholder.

[277] Note that the second largest stakes in France and Ireland are larger than in Germany.

6. VOTING POWER MEASURES

In the previous section we considered ownership concentration, though it is important to keep in mind that ownership and voting power are not necessarily equivalent. The power of one shareholder can substantially differ from the absolute percentage of the votes he or she possesses (Leech, 2002). Consider a company that has two shareholders: one holds 51% of the voting rights (shareholder A), and the other holds 49% (shareholder B). If provisions are adopted with a simple majority, shareholder A holds all voting power. In contrast, if a special majority is required, 75% for instance, both shareholders have the same ability to block a resolution. Next, we consider a company that has three shareholders, A, B, and C, who own 47%, 49%, and 4% of the stock, respectively. The quota to pass a resolution is 51%. Since any two of shareholders have enough votes to pass a resolution, the voting power is actually *equally divided* among the three shareholders, although shareholder A and B have significantly more votes than shareholder C. It should be clear that if a shareholder has less votes than another shareholder, this shareholder can never have more power. However, this example points out that shareholders with completely different stakes can be equally powerful.

The voting power of a specific shareholder is not only determined by his own stake, but depends on the company's entire ownership structure. This means that a threshold of 20% may be sufficient for control in some situations, whereas in other situations this may not be the case.[278] We consider another example: a company has one large shareholder that holds 20% of the voting rights and 80 other small symmetric shareholders that all hold a stake of 1%. In this case, the voting power of the large shareholder exceeds 60%. [279] And, in case there are 160 small symmetric shareholders that all hold a stake of 0.5%, the voting power of the large shareholder that holds a 20% stake even exceeds 90%. In contrast, in case there is another large shareholder with 18% of the votes and all other small symmetric shareholders with 1%, the voting power of the large shareholder with 20% of the votes only amounts to fifteen%.

6.1. Methodology

We can use power indices to measure the power of an individual shareholder in a voting game. There are two classical voting power indices mainly used in the literature; the Banzhaf index, often denoted by and the Shapley-Shubik index. Whereas the Shapley-Shubik index reasons from the point of view of a player in a sequential coalition that changes the coalition from a losing to a winning one, i.e. is the pivotal player (putting the total amount of votes at or over the required quota), the Banzhaf index takes into account all players that are critical or decisive in a winning coalition. The Banzhaf index was named after John Banzhaf who in 1965 proposed a new voting power index besides the Shapley-Shubik index. It was applied by the New York Court of Appeals in two 1966 cases and has been used in cases ever since (Straffin, Jr., 1988). Banzhaf argued that 'the appropriate measure of a legislator's power is simply the number of different situations in which he is able to determine the outcome' (Banzhaf, 1965, p. 331).

[278] Many researchers use a threshold of 20% to indicate control. Examples are the seminal works of Berle and Means, La Porta et al. Following Van der Elst (2010), pp. 3-4.
[279] Normalized Banzhaf Index, calculated with the program *Ipmmle*.

In this research we will not further address the mathematics of these two voting power indices.[280] Instead, we consider the following simple game to explain the computational difference between the Banzhaf index and Shapley-Shubik index. Assume there are three players, with stakes of seven, six, and four votes each. The quota is set at eleven votes. The game can then be described as: {q: 1, 2, 3} = {11: 7, 6, 4}. First we consider the Banzhaf index. In our example, we take into account all *winning* and *blocking* coalitions. A blocking coalition is a coalition that has collective veto power and thus enough votes to defeat a motion. Since there are three shareholders, we have 2^3 coalitions.[281] However, as this rule of thumb also includes so-called 'empty coalitions', and these coalitions have no purpose in our example, there are in total seven coalitions that could be formed by the shareholders in our game.[282] The winning coalitions are: {1,2}, {1,3} and {1,2,3}. For these coalitions, player one is three times critical and players two and three are one time critical.[283] With respect to the blocking coalitions that need seven votes in order to be able to block a motion[284] we have: {1}, {1,2}, {1,3}, {2,3} and {1,2,3}. Of these coalitions, player one is three times critical and player two and three are one time critical.[285] In total, the players are ten times critical in this game. The Banzhaf voting power of these players is {1,2,3} = {3/5; 1/5; 1/5}. The Banzhaf voting power indices are: $\beta_1 = 3/5$; $\beta_2 = 1/5$, and $\beta_3 = 1/5$.

In contrast, as we have seen before, the Shapley-Shubik index considers all sequential coalitions that contain *all* players. As we have three shareholders, we have *3!* coalitions: {1,2,3}, {1,3,2}, {2,1,3}, {2,3,1}, {3,2,1} and {3,1,2}. In the first coalition, player two is pivotal; in the second coalition player three is and in all the other coalitions, player one is pivotal. Hence Shapley-Shubik voting power indices are: $\emptyset_1 = 4/6$; $\emptyset_2 = 1/6$, and $\emptyset_3 = 1/6$.[286]

Scholars generally consider the Banzhaf index more suitable for shareholder voting analyses. Leech (2002) calculates these two classical indices for shareholder voting in a cross-section analysis of 444 large British companies for the years 1985 or 1986 and compares these indices with some 'reasonable criteria which the indices should satisfy'. He concludes: 'the results are unfavourable to the Shapley-Shubik index and suggest that the Banzhaf index much better reflects the variations in the power of shareholders between companies as the weights of shareholder blocs vary'. Straffin Jr. (1988) provides an example of the difference between these two indices: 'consider a corporation with one stockholder who holds 10% of the stock and a large 'ocean' of small stockholders who

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[280] For more information about the mathematics and a further comparison of the two indices, one may refer to Leech (2002, 2003); Rydqvist (1987); Felsenthal and Machover (1998); Straffin Jr. (1988). Another power index is the Deegan-Packel Index (Deegan & Packel, 1978).

[281] Using the rule of thumb 2^N, where N is the number of shareholders.

[282] These coalitions are {1}, {2}, {3}, {1,2}, {1,3}, {2,3} and {1,2,3}. Hence, the Banzhaf index also takes into account 'coalitions' that consist of one shareholder.

[283] In other words, if this player leaves the coalition, the coalition turns from a winning one into a losing one.

[284] For a blocking coalition, one needs at least ($W - q + 1$) votes, where W is the total amount of votes, which is in this case 17, and q is the quota, which is eleven in this case. Hence, in order to have a blocking coalition, one needs to have at least seven votes.

[285] In coalition {1,2,3} none of the shareholders is critical.

[286] For coalitions {1,2,3} and {1,3,2} you may recognize that shareholder 3 and 2 respectively may also have a pivotal position in case the second shareholder that joins, shareholder 2 and 3 respectively, decides not to join the coalition. These shareholders can then decide to join the coalition and turn it into a winning one. However, the Shapley value only considers the first cumulative weight that is equal to or greater than the quota; this is the definition of a pivotal voter. In other words, the Shapley Shubik index assumes that each player, in turn, votes in favour of the proposal (Leech, 2003).

hold the remaining 90%. The Shapley-Shubik index gives 11% of the power to the large stockholder; the Banzhaf index gives close to 100% of the power to the large stockholder. Per Overland et al. (2012), the Shapley-Shubik indices 'cluster in the same component as [the estimate for] largest owner which clearly does not take other shareholders into consideration, [...] [which] lends further support to the analysis made by Leech (2002), that Shapley-Shubik indices to a lesser degree than Banzhaf indices capture the power balance between shareholders' (pp. 32-33). They conclude their study by stating that caution is warranted when analysing the effects of ownership, but that it could be argued that measures such as Banzhaf indices are to be considered more trustworthy than simple measures such as ratios of the largest to the second largest shareholder. In contrast, per Rydqvist (1987) the Shapley value 'seems to be more realistic' (p. 65) for shareholder voting. Although it seems that scholars nowadays generally consider the Banzhaf index more suitable for measuring voting power of shareholders (one may also refer to Poulsen, Strand and Thomsen, 2010), we also calculate the Shapley-Shubik index to further explore the differences between these two indices under different ownership structures. Descriptive statistics are reported in section 6.2 of this chapter. To overcome the previously mentioned problem of incomplete information, the Banzhaf index and Shapley-Shubik index in this study are calculated under the assumption of a theoretical small shareholder that holds 1% of voting rights.[287] For the calculations of the Banzhaf index the program *Ipmmle* is used; the Shapley-Shubik index is calculated with the *Ssmmle* program.[288]

When using a mathematical model to evaluate the behaviour of real-life actors, one needs to keep in mind that such a model always involves some simplification of reality. For example, neither the Banzhaf nor the Shapley-Shubik index considers shareholder preferences (Kaniovski and Leech, 2009).[289] These indices measure *a priori* voting power and all voting outcomes are equally likely. In other words, past behaviour and actual preferences are not considered. Banzhaf (1965) briefly dismisses the possibility of abstention from his analysis, stating that '[t]his analysis has also assumed that all legislators are voting because this is the most effective way for each legislator to exercise his power. Naturally, some may choose to exercise their power in a less effective manner by abstaining or by being absent from the legislative chamber' (Banzhaf, 1965, p. 332). Hence, in

[287] If the stake of the small shareholders were ε in the dispersed case, which is a number that is approximately zero, the Banzhaf index can be obtained as the Banzhaf index for a game that only consists of the large shareholders. This implies that the voting power of small shareholders will automatically be zero, leaving us with no means to test hypothesis three. Moreover, the number of possible coalitions would be infinitely large. In other words, the stake of small shareholders needs to be larger than ε, which limits the maximal number of shareholders in a company (per Dubey & Shapley, 1979; Leech, 2002). One can argue that the chosen stake of 1% is completely arbitrary. However, the purpose of using a voting power measurement is to be able to consider the *relative* difference in voting power for different ownership structures, which makes this statement less relevant.

[288] It is almost impossible to calculate the Banzhaf index for a game with many players by hand. The number of possible coalitions for 100 players is 2^{99}, which is approximately $6.34*10^{29}$. For this reason, the program *Ipmmle* provided by Leech is used to calculate the index. Per Leech, 'it can be applied to large voting bodies of any size (either in terms of number of players or in terms of votes). The voting weights and quota are not restricted to being integers'. The program can be found on (<http://homepages.warwick.ac.uk/~ecaae/ipmmle.html>). The appendix provides a further analysis of the Banzhaf Index.

[289] The authors refer to Garrett and Tsebelis (1999); Gelman, Katz and Bafumi (2004). Kaniovski and Leech also refer to the debate in the *Journal of Theoretical Politics* in 2004-2005 between Napel and Widgrén and Braham and Holler. One may see Napel and Widgrén (2004); Napel and Widgrén (2005); Braham and Holler (2005a); Braham and Holler (2005b).

shareholder voting games, shareholders generally have three options instead of two – for, against and abstain.[290] Despite these very relevant shortcomings, voting power indices remain the best available measures to consider shareholder voting power in large voting games.[291]

In addition, and this is particularly relevant for AGMs, both the Banzhaf index and the Shapley-Shubik index measure voting power for 100% attendance. This is intuitively correct, since these indices are *a priori* indices that measure voting power *ex ante*. Poulsen, Strand and Thomsen (2010) tried to take into account the probability that a shareholder indeed exercises his voting right (see the appendix to this chapter). The authors use a measure that is based on the Banzhaf index, named the company's 'amenability'. The authors explain this measure as 'the sensitivity of the largest shareholder's voting power to increased participation by small (1%) shareholders' (p. 333) and calculate the average percentage decrease in the voting power of the largest shareholder when yet another small shareholder is successively added to the voting game. The authors first consider only large shareholders (these are shareholders with more than 1% of the voting rights) and calculate the voting power of the largest shareholder among these shareholders in accordance with the Banzhaf index. In this way, the authors assume that large shareholders are always present during AGMs, which is in line with Van der Elst (2011) and the assumption in section 2.2. of this chapter. Next, the authors add a small shareholder that holds 1% of the voting rights to the game and evaluate whether the presence of this small shareholder will affect the voting power of the largest shareholder. They continue adding small shareholders until the game includes 100% of the votes. If adding small shareholders leads to a decrease in the voting power of the largest shareholder, the authors consider the company 'amendable to small shareholder activism'. For games with players who hold less than 100% of the votes, the authors adjust the quota of the game.[292] The authors argue that their amenability measure would capture the effect that not all small shareholders will vote as a result of free-rider problems (Poulsen, Strand and Thomsen, 2010, p. 334).

When calculating *the average percentage decrease* in the voting power of the largest shareholder by adding another small shareholder to the voting game up to 100%, the authors implicitly assume that these small shareholders assign equal probability to being the first small shareholder, the last one, and all positions in between.[293] Thus, although this measure tries to take into account the possibility that not all shareholders will exercise their voting rights, this underlying assumption does not accord with past experience. Furthermore, as the examples in the appendix to this chapter

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[290] Some authors argue that (institutional) investors rather abstain from voting than vote against. See *supra*, section 3.5.

[291] Kaniovski and Leech (2009) develop a behavioural voting power index that takes into account the preferences of the other players when calculating the voting power of a specific player. More specifically, the authors propose an empirically informed power measure that relaxes the strong assumption of binomial voting and replaces it with probability distributions that reflect real player preferences. The authors base the definition of the power index for each individual player on a different probability distribution, which is empirically estimated from a relative frequency distribution over the set of all theoretically possible voting profiles. The authors apply this method to voting in the US Supreme Court. It would be very interesting to apply this method to shareholder voting games, but unfortunately, this is practically not feasible for our research due to computational issues, but also due to a lack of empirical information.

[292] The authors calculate the majority rule for a game with *n* participating shareholders in accordance with the following formula $Q - \frac{1-\sum_{i=1}^{n} w_i}{2}$. Hence, in case the quota Q is 0.51 (simple majority voting, and the smallest voting stake is 1%) and a specific game includes five shareholders, in total holding a stake of 0.6, the majority rule Poulsen, Strand and Thomsen consider is $0.51 - (0.4/2) = 0.31$.

[293] In our two examples, the average percentage decrease in voting power of the largest shareholder is 0.49% and 0.72%, respectively.

indicate, whether small shareholders vote may be affected not only by the voting power of the largest shareholder but also by that of other shareholders in the game. The method used by Poulsen, Strand and Thomsen (2010) does not seem to have convincing advantages relative to Banzhaf's.

6.2. Descriptive Analysis

We calculate the Banzhaf index and Shapley-Shubik index for a simplified game with the assumption that a hypothetical small shareholder holds 1% of the voting rights. As one can see in table 9, the voting power of a small shareholder with 1% of the votes is the smallest in Belgium, with 0.29% of the total voting power (Banzhaf index for small shareholders). In contrast, a small shareholder has an average voting power of 0.83% in the UK. In Ireland and France, small shareholders have on average a voting power of 0.74% and 0.66% respectively for the companies considered in this sample. In Austria and Germany this figure is 0.40% and 0.57%, respectively. In the Netherlands, small shareholders have a mean voting power of 0.59%. The average voting power of the largest shareholders in the sample is relatively high in Belgium and Austria with 73.31 and 67.23%, respectively. The largest shareholders have the lowest average voting power in the UK.

In 222 of the 1,255 observations analysed, the largest shareholder has a de jure majority stake, i.e., 50% + 1 vote. For 297 observations, the largest shareholder has approximately all voting power (a normalized Banzhaf index of over 99%). A shareholder with (approximately) all voting power is present at 40% of the Austrian AGMs in the sample; that number rises to 67% in Belgium. In contrast, for the UK this is only 12% of all AGMs in the sample. The smallest stake for a shareholder with over 99% of the voting power is 31% (Solvay NV, Schoeller-Bleckmann AG and Deutsche Post AG) and the smallest stake for shareholder that has over 99.99% of the voting power is 38% (Bekaert NV). In practice, 38% of the voting rights will generally provide full power: as we have seen, average turnout is 62.3% in 2010 for our total sample, and increases to 67.2% in 2014. The highest average voting right was measured for Ireland in 2014, with 72.3%. Also here, the largest shareholder that holds 38% of the voting rights usually has all voting power.

For a few of the 1,255 observations, the Banzhaf index assigned a voting power that larger than 1% to the small shareholders with a 1% of the voting rights (40 observations in total). The largest voting power of a small shareholder in this sample was 1.70%. In this simplified game for the shareholders of Bouygues S.A., the largest shareholder (SCDM) had a stake of 29% of the exercisable voting rights on 31 December 2012 and the second largest shareholder (shares owned by Bouygues employees under a company saving scheme) also had a stake of 29%.[294] There were 42 small shareholders who all held 1% of the votes. The Banzhaf index assigned a voting power of 14.36% to the largest (and thus also the second largest) shareholder. Another example is the voting power for a small shareholder in Telekom Austria AG; on 31 December, 2012, the Republic of Austria held 28% of the votes through ÖIAG and América Móvil held 23%.[295] We were not able

[294] SCDM is a limited company controlled by Martin Bouygues and Olivier Bouygues. The stake of SCDM includes shares owned directly by Martin Bouygues and Olivier Bouygues according to the 2012 Registration Document of Bouygues, p. 207. Shares owned by employees under a company saving scheme are reported as one stake. In this study stakes are reported as integers. The 2012 Registration Document reports a stake of 29.2 for SCDM and 28.7 for the employees. The Banzhaf index is 15.29% for SCDM and 13.60% for employees, in case stakes are rounded to nearest integers.

[295] Annual Report 2012 of Telekom Austria AG.

to find any information about any shareholder agreement or other arrangement between these two shareholders, and we therefore assume that these shareholders were not acting in concert.

In the simplified game for Telekom Austria AG, there were 49 small shareholders all holding 1% of the voting rights. The Banzhaf index assigned 1.39% of the voting power to these small shareholders; the Republic of Austria had a voting power of 24.10%. In practice, shareholder turnout rates may be substantially lower than 100%, as we have seen in the previous sections. If the total turnout at this AGM had been 56%, the largest shareholder would have had a majority stake for normal resolution (no special majority required). If this were indeed the case (which it was not at the Telekom Austria AG AGM, as the turnout rate was around 70%), small shareholders would have had virtually no voting power.

We also calculate the Shapley-Shubik value for all largest shareholders and the hypothetical small shareholder that retaining a 1% share of the votes. It follows from Table 9 that these two indices yield different results: *on average*, the Shapley-Shubik index (SHAPLEYsmall) assigns more voting power to small shareholders (on average 0.78% for the whole sample, compared to 0.67% reported for the Banzhaf index, denoted as BANZHAFsmall) and assigns less voting power to the largest shareholders (on average 32.33% compared to 40.72% for the whole sample). For example, in a game where there is one large shareholder holding 38% of the voting rights and 62 small shareholders holding each 1% of the voting rights,[296] the Banzhaf Index (BANZHAFlarge) reports a voting power of 99.99% for this large shareholder when using a quorum of 51%, and assigns approximately zero voting power to the small shareholders. In contrast, the Shapley-Shubik index (SHAPLEYlarge) assigns only 60.35% of the voting power to the large shareholder and 0.64% to each small shareholder. And for a game with one large shareholder that holds 31% of the voting rights and 69 small shareholders,[297] the Banzhaf index assigns a voting power of 99.18% to the large shareholder, whereas the Shapley-Shubik index assigns only 44.30% of voting rights to this large shareholder.[298]

TABLE 9

Shareholder voting power (reported in %)[299]

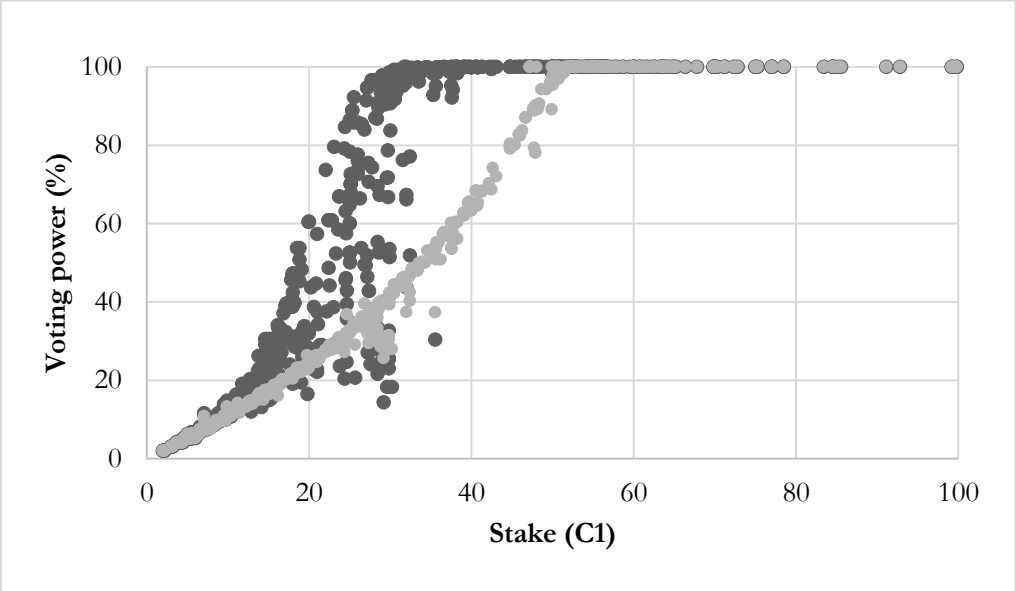
Country	**BANZHAF small**	**BANZHAF large**	**SHAPLEY small**	**SHAPLEY large**
Austria	0.38	69.51	0.57	55.25
Belgium	0.29	73.31	0.49	61.30
France	0.66	44.15	0.77	34.53
Germany	0.57	49.09	0.77	35.08
Ireland	0.74	39.30	0.77	33.94
Netherlands	0.59	45.67	0.77	33.81
UK	0.83	24.80	0.88	20.87

[296] This is the simplified game of NV Bekaert SA where Stichting Administratiekantoor Bekaert holds approximately 38% of the total voting rights.
[297] This is the simplified game of Solvay where Solvac SA holds around 31% of the votes.
[298] These findings correspond to the statements of Straffin Jr. (1988).
[299] The percentages of the Banzhaf index and Shapley-Shubik Index are rounded to the second decimal due to their size.

Figure 5 shows the differences between the Banzhaf and Shapley-Shubik indices in relation to the voting stakes of the largest shareholders. The values of the Banzhaf index have a wider spread for the observations in our sample; the standard deviation of the Banzhaf index for all observations is 40.0% compared to 34.0% for the Shapley-Shubik index. In general, a large shareholder holding a voting stake of around 30% holds all voting power according to the Banzhaf index; this threshold is somewhere below 50% for the Shapley-Shubik index.

FIGURE 5

BANZHAFlarge (dark grey) and SHAPLEYlarge (light grey) compared[300]



Like Leech (2002), we conclude that the Banzhaf index better reflects the voting power of large shareholders. Figure 8 shows that the Banzhaf index indeed meets the 'appraisal criteria' set by Leech (2002), including the criteria that i) the voting power of the largest shareholder should almost always be close to 100% whenever the weight of its stake is above 30%, ii) the voting power of the largest shareholder should often be close to 100% whenever the weight of its stake is between 20 and 30%, iii) the voting power of the largest shareholder should sometimes be close to 100% whenever the weight of its stake is between 15 and 20%, and iv) the voting power of the largest shareholder should virtually never be close to 100% whenever the weight of its stake is less than

[300] The Banzhaf index outlier at point (36, 30) shows the voting power for the largest shareholder of Elia NV (Belgium) in 2010; at the time, shareholder Publi-T had a voting stake of around 36%, whereas the second largest shareholder (Electrabel SA, ultimate owner: GDF Suez) had a stake of around 24% and the third shareholder around 10%. The two largest shareholders agreed to transfer around half of the stake a few weeks before the 2010 AGM. This agreement was announced in a press release on 31 March, 2010 (<http://www.elia.be/~/media/files/Elia/PressReleases/2010/EN/20100331_PUBLIT_EBL_EN.pdf >). (accessed in March 2015). The press release states that the 'agreement will be proposed for approval to the Board of Directors of Publi-T on 31 March. Details of the agreement will be finalised in the near future so that the boards of the parties can ratify it in the coming weeks and the offering can be organised *before June 30*.' Elia's 2010 AGM took place on May 11. In the minutes of the Extraordinary General Meeting, which took place right after the AGM on May 11, it is clearly stated that Electrabel transferred 6,035,522 shares to Publi-T *after* the meeting. The outlier at point (14, 29) shows the voting power of the largest shareholder of Bouygues (SCDM), which we discussed in this section (*cf. supra*, footnote 294).

15%. The Shapley-Shubik index does not seem to meet these criteria (i.e. for a voting stake of 30%, it assigns a maximum voting power of around 45%).

However, when we look at the voting power for *small* shareholders, the Shapley-Shubik index may be preferable in shareholder voting games in some situations. Consider the example of Telekom Austria again: whereas the Banzhaf index assigns a voting power of 1.39% to small shareholders, the Shapley-Shubik index only assigns a voting power of 0.99%. Since voter turnout rates are in practice never 100%, small shareholders usually have little voting power under normal majority rules. Figure 6 below shows the differences between the Banzhaf index and the Shapley-Shubik index for small shareholders that with 1% of the voting rights:

FIGURE 6

BANZHAFsmall (dark grey) and SHAPLEYsmall (light grey) compared

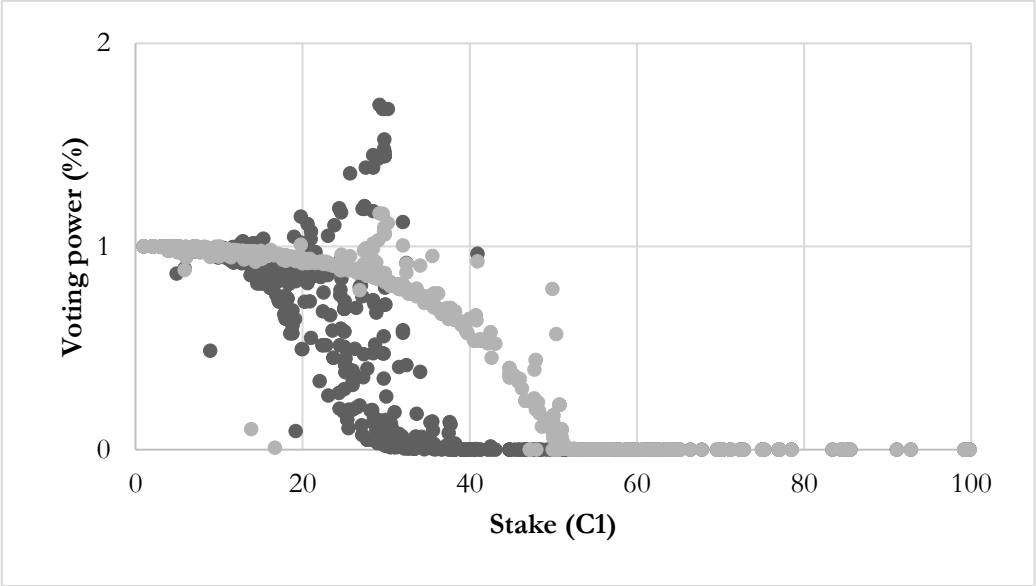


Figure 6 shows that the Banzhaf index for small shareholders has a larger spread than the Shapley-Shubik value. Although the Banzhaf index assigns a voting power of zero to some cases in which the largest shareholder has an average stake of around 30% (in line with the findings of figure 8), it may also assign a voting power of (much) more than 1%. In contrast, the Shapley-Shubik index shows a function between 0 and 1%, with some outliers between 1 and 1.2%. It may be the case that the Shapley-Shubik index better explains the voting power of small shareholders in practice in some situations, for instance in the example of Telekom Austria AG, whereas the Banzhaf index is preferable in those cases where there is *only one large shareholder* that holds a *de facto* controlling stake (between 30-45%). In the next chapter we will evaluate the effect of both indices on (small) shareholder turnout rates.

6.3. Concluding Remarks

In section 5, we have seen that ownership is less concentrated in the UK compared to the other Member States. In this section 6, we have considered shareholder voting power and we found that small shareholder voting power is significantly higher in the UK as well. In Belgium, the largest shareholder has the largest voting power on average. The Banzhaf index assigns a relatively high

voting power to small shareholders in Ireland. In contrast, when using the Shapley-Shubik index, we find that small shareholders in France, Germany, Ireland and the Netherlands have, on average, the same voting power. Figure 5 and 6 show the differences between the Banzhaf and Shapley-Shubik indices for our observations. Because of these large differences, we evaluate the effect of both indices on the turnout decision in the next chapter.

7. SHAREHOLDER VOTING BEHAVIOUR

In the previous chapter, we have seen that the agenda of AGMs largely differs among Member States and companies. In our empirical framework we consider the content of AGM agendas of the companies in our sample and shareholders' response to particular voting items. Important agenda items include *inter alia* director (re-)elections and say-on-pay resolutions. According to Van der Schee (2011), the appointment and dismissal of board members constitute the most important powers of the shareholders in theory; since 'the board 'controls' the strategy and policies of the firm, 'control' over the board is crucial' (p. 139). Cools (2011) also argues that '[t]he most important voting right of shareholders is probably the right to elect and dismiss directors' (p. 200). The number of director elections may thus have a positive effect on shareholder attendance. These directors can be executive directors or non-executive directors (one-tier board structure) or part of the supervisory board or the management board (two-tier board structure). For example, in Belgium, shareholders may also decide upon the independence of several directors (*cf. supra*, chapter one of this study). Conyon and Sadler (2010) state that shareholders are much likelier to vote against resolutions related to directors pay compared to other types of non-pay related resolutions. Moreover, they find that high executive pay packages obtain more votes against.

7.1. Methodology

To evaluate shareholder voting behaviour we first need to define the voting item categories. We based these categories on the legal analysis in chapter one. Table 9 in this chapter provides an overview of the categories. Resolutions that are included in one category are not included in any other. Since shareholders usually need to vote multiple times at the same meeting on voting items that belong to a certain voting category – for instance director (re-)elections or discharge – we only recorded the highest opposition per voting category per meeting in our analysis. The categories of resolutions in table 9 are not comprehensive, as in many Member States shareholders may vote on other voting items as well (*cf. supra*, chapter 1, section 5).

Besides voting in favour or against, shareholders can also abstain from voting. When shareholders abstain from voting, it is not entirely clear what their intentions are. These shareholders clearly do not intend to vote against a resolution, but are not in favour either. But why are abstentions (or 'votes withheld') practiced? One may argue that (institutional) investors would like to avoid conflicts during AGMs. In other words, institutional investors may not vote against resolutions unless they fiercly disagree with the incumbent corporate management. Per Mallin (2012) 'abstain is not as negative as a vote against but is still seen as a strong signal of an institutional investor's disapproval' (p. 185). Strätling (2003) argues that institutional investors are 'reluctant' to vote against resolutions put forward by the management and provides the example that NAPF (National Association of Pension Funds) asked institutional investors to withhold their support, but not vote against, the re-election of a director as a protest of the remuneration policy at the 2000 Vodafone Airtouch AGM. According to the author, institutional investors tend to

avoid tarnishing the reputation of the companies they invest in. Thus, these shareholders will discuss matters with the corporate board prior to AGMs (which is yet another argument against the relevance of the AGM). Mallin's research (2012) indicates that two large institutional investors in the UK, Hermes and Aviva Investors more often vote against proposals than abstain from voting. For example, Hermes only abstained from voting 14 times in the period 2007-2009, a period in which it voted on over 13,000 resolutions at 1,272 meetings. In that same period, it voted against more than 120 times. Aviva Investors abstained more often from voting than Hermes but the number of resolutions it voted against is still higher (over 1,600 times voted against versus over 600 times abstained). We do not consider the abstentions in the calculation of the proportion of the votes against the resolution. Although the argument that abstentions may signal some dissent seem plausible to some extent, we decided to – in contrast to Renneboog and Szilagyi (2013) – not include abstentions in our shareholder opposition variables. When a shareholder abstains from voting, his or her intentions remain unclear, and there may be a slew of other explanations for why a shareholder reached his or her decision to abstain. In contrast, if a shareholder votes against, or in favour, intentions are clear. Moreover, there is no economic rationale to abstain from voting for small shareholders as Charléty, Fagart and Souam (*unpublished*) explain, as this strategy is strictly dominated by either voting in line with preferences or not voting in the first place.

Lastly, article 6 of the Shareholder Rights Directive (2007/36/EC) allows shareholders (acting in concert) with stakes of at least 5% to add proposals to the AGM agenda. In case there is an item that is put on the agenda by a shareholder, it might be the case that shareholders have a greater incentive to attend the AGM as the passage (or the dismissal) of such a resolution might be of great importance to them. At the very least, these shareholder proposals are a form of shareholder activism.[301] Previous cases in the Netherlands such as the ABN Amro case indicate that (the threat of) shareholder proposals may have significant consequences.[302] Another example is the failed bid of Deutsche Boerse AG for the London Stock Exchange Group Plc.[303] The Dutch dispute between Fugro NV and its large shareholder Boskalis NV shows that, although shareholder proposals may not often be placed on the meeting agenda in Europe (*cf. supra*, chapter 1, section 2.1.2), shareholder proposals are still at the heart of corporate power struggles.[304]

[301] Van der Elst (2011), pp. 4-5.

[302] Well-known Dutch cases on shareholder activism are the ABN Amro case and the Stork case. In the ABN Amro case, the activist shareholder The Children's Investment Fund Management (TCI) acquired only 1% of the share capital of ABN Amro and requested a split-up of the banking group (*Hoge Raad* 13 July 2007, *JOR* 2007, 178; Raaijmakers, 2007a). In the Dutch Stork case, the Dutch *Ondernemingskamer* (translation: Enterprise Chamber, which is part of the Amsterdam Court) states that the management board is exclusively entitled to determine the corporate strategy (*Hof Amsterdam* 17 January 2007, *JOR* 2007, 42). See also Raaijmakers (2007b).

[303] The hedge fund TCI also played a large role in this case. The activist shareholder that owned 5% of the stock of Deutsche Boerse at the time requested Deutsche Boerse to abandon its plan to buy London Stock Exchange. TCI also requested to hold an EGM in order to vote on replacing the entire supervisory board. Eventually Deutsche Boerse was forced by its shareholders to withdraw the takeover plan and on May 9, 2015, the CEO, Seifert, the non-executive chairman and three other non-executives resigned. See for example Jenkins and Cohen (2005).

[304] For example, one may refer to Kooiman and Lalkens (2015).

7.2. Descriptive Analysis

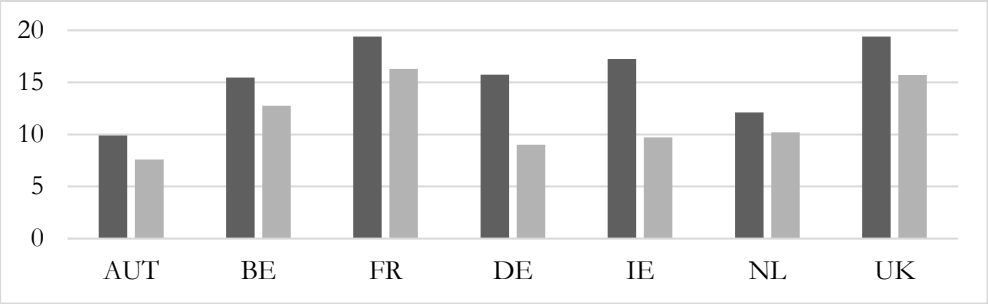
7.2.1. AGM Agenda

This research examines over 21,000 voting items for 1,255 AGMs during a period of five years. Shareholders could vote on 16.9 voting items per meeting on average. The UK and France had the highest average number of voting items per meeting (both 19.4 on average).

When correcting for the number of director (re-)elections and discharge of directors, the average number of voting items in France is slightly higher than in the UK; 16.3 as compared to 15.7. This is because it is common practice in the UK (and also in Ireland) for board members to be re-elected every year, whereas this is not the case in the other countries. In France, companies usually call a combined meeting, i.e., a meeting with an ordinary part and an extraordinary part (*cf. supra*, chapter 1, section 3). In the extraordinary part, amendments to the articles of association are usually presented as separate resolutions for each amendment. The same holds for Belgium. In Austria, the agendas are generally shortest: the average number of agenda items is 9.9 (7.6 when corrected for elections and discharge of directors). The results are shown in the figure below.

FIGURE 7

ITEMS per Country (second bar is corrected for (re-)elections and discharge of directors)



Voting items were withdrawn prior to twenty of these 1,255 AGMs. Even prior to the AGM of Bwin.party Digital Entertainment Plc[305] four voting items were withdrawn. These four resolutions were shareholder proposals that were initially put on the agenda by SpringOwl Gibraltar Partners B Limited. In its press release of May 22, 2014, Bwin.party Digital Entertainment Plc explained 'that it has agreed to work closely with SpringOwl on the appointment of its new directors and confirms its agreement to consider Michael Fertik, one of SpringOwl's nominees, as a potential candidate. To support this process, SpringOwl has nominated Daniel Silvers to the Board under the terms of the Relationship Agreement. Daniel Silvers will take up his position on the Board as soon as practicable.'[306] SpringOwl holds 5.25% of the share capital of Bwin.party Digital Entertainment Plc and added four resolutions regarding the election of directors to the agenda.[307]

[305] Bwin.party Digital Entertainment Plc is included in the sample as an Austrian company. In the beginning of 2011, Bwin Interactive Entertainment AG merged with PartyGaming Plc and changed its name into Bwin.party Digital Entertainment Plc. To date, Bwin.party Digital Entertainment Plc is a FTSE-250 company.

[306] Press Release 22 May, 2014, Bwin.party Digital Entertainment Plc, 'Agreement with SpringOwl'. (<https://www.bwinparty.com/Investors/FinancialNews/2014/20140522%20Agreement%20with%20SpringOwl.aspx>). (accessed in March 2015).

[307] One may refer to '2014 AGM Shareholder Letter' and '2014 AGM Further Resolutions (Press Release)' on the website of Bwin.party Digital Entertainment Plc

Apparently, the board and SpringOwl had reached an understanding prior to the AGM. This example demonstrates how shareholders may use the AGM pressure the company's board, but that corresponding negotiations can take place outside the AGM behind closed doors. The only voting item during the 2010 SA D'Ieteren NV EGM was withdrawn as well: the proposed resolution concerned the acquisition of another company, but the legal requirements were not yet met at the time of the general meeting.[308] The proposed resolutions at the 2011 EGM of Delhaize NV to change the company's articles of association (increase of the authorised capital) were not put to a vote due to the low turnout (the quorum was not met, *cf. supra*, chapter one of this research).

The ELECT variable was calculated as the total number of board members elected or re-elected by the AGM. Germany, Austria and the Netherlands require a two-tier board system[309], including a *Vorstand* or *Raad van Bestuur* (management board) and an *Aufsichtsrat* or *Raad van Commissarissen* (supervisory board). In contrast to Germany, Austria and the Netherlands, companies in the UK, Ireland, Belgium and France usually follow a one-tier board system (*cf. supra*, chapter one section 5.2). Hence, the ELECT variable included executive and non-executive board members for companies with a one-tier board structure, supervisory board members for companies with a two-tier board structure and independent board members (Belgium).

TABLE 10

ELECT

Country	ELECT	Average re-elected	Average elected
Austria	2.3	0.5	1.8
Belgium	3.4	2.4	1.1
France	4.4	2.6	1.9
Germany	2.5	0	2.5
Ireland	8.9	8.2	0.6
Netherlands	3.2	2.2	1.1
UK	9.3	8.1	1.2

Table 10 shows that the average number of directors the AGM elects or appoints is relatively high in Ireland and the UK compared to the other countries; it is common in the UK and Ireland for board members to be re-elected every year, unlike in other countries in our sample.

7.2.2. Rejected Voting Items and Shareholder Proposals

Relatively few voting items did not pass. Of the over 21,000 voting items examined in this study, only 166 voting items were dismissed during 96 AGMs. When we exclude (employee) shareholder proposals and countermotions, the number of rejected items falls to 67. Some AGMs experience relatively large shareholder opposition. For example, at the 2011 Publicis SA AGM shareholders

(<https://www.bwinparty.com/Investors/2014%20AGM.aspx>). (accessed in March 2015).

[308] The press release on the D'Ieteren website: '*Het enige punt van de vandaag bijeengeroepen buitengewone algemene vergadering – te weten de fusie door overneming van de immobiliëndochtervennootschap N.V. Immonin, eigenares van een garage in Audergem, met de S.A. D'Ieteren N.V. – is aan de agenda onttrokken omdat de formaliteiten verbonden aan de toepassing van de nieuwe op 1 januari 2010 in werking getreden milieureglementatie inzake overdracht van vaste activa, niet binnen de termijn konden worden gerealiseerd*'.

[309] As per January 2013, Dutch companies are also allowed to adopt a one-tier board system.

rejected six resolutions. And during the 2013 AGM of GlencoreXstrata Plc (currently: Glencore) four resolutions were dismissed related to the re-election of board members.

The right to elect board members is considered one of the greatest shareholder powers in theory. However, only in three AGMs did management resolutions on the (re-)election of directors not pass: the 2013 GlencoreXtrata Plc[310] AGM and the 2011 and 2012 Independent News and Media Plc AGMs. During the 2013 GlencoreXstrata Plc AGM four board members' re-elections were not approved. These resolutions concerned the re-election of Sir John Bond, Ian Strachan, Con Fauconnier and Peter Hooley as directors. The 2013 AGM was the first general meeting after the merger between Glencore and Xstrata and the directors that were not re-elected were former Xstrata board members. Steve Robson has already resigned prior to the AGM and accordingly the voting item to re-elect him as one of the non-executive board members was withdrawn from the meeting's agenda. Sir John Bond was GlencoreXstrata Plc's chairman of the board of directors at the time. The *Financial Times* refers to these events during the 2013 AGM as a 'boardroom coup and shareholder revolt' that 'was "unprecedented" in UK corporate life' (Blas, 2013). According to the *Financial Times* the voting results indicate that Glencore's executives and employees, holding together a stake of around 36%, 'opposed their re-election en masse' (Blas, 2013). Although the former GlencoreXstrata Plc chairman had already announced his intention to resign after he experienced large shareholder resistance to a large package of retention bonuses for Xstrata managers before the takeover (Blas, 2013; Riseborough, 2013).

During the 2011 Independent News and Media Plc AGM, the proposal to re-elect Leslie Buckley, representative of shareholder O'Brien, as a director did not pass as it received 58.6% of the votes against. The media described this event as a 'corporate clash' and a 'horrific boardroom face-off' (O'Carroll, 2011). At the time, the largest shareholder of Independent News and Media Plc Denis O'Brien and the CEO Gavin O'Reilly (the O'Reilly family held a stake of 13%) were involved in a power struggle. Gavin O'Reilly resigned in April 2012 as a result of 'ongoing tensions'. During the 2012 Independent News and Media Plc AGM James Osborne and Donal Buggy were dismissed by the major shareholder O'Brien;[311] at an EGM of 27 August, 2012, Leslie Buckley was again elected as board member.

Say-on-pay resolutions were not dismissed very often either. For example, of the 641 times shareholders could vote on the approval of the remuneration report, the proposal did not pass only eight times. The William Hill Plc shareholders voted with only a slight majority of 50.11% for the approval of the remuneration report. The remuneration policy was not dismissed during any AGM. And the proposal for the remuneration system in Germany was dismissed only once, during the 2010 HeidelbergCement AG AGM. Supervisory board or non-executive remuneration proposals were also not rejected.

An overview of the dismissed say on pay resolutions is provided in table 11.

[310] During the 2014 AGM, the shareholders of GlencoreXstrata Plc voted in favour of changing the name into Glencore Plc.

[311] O'Brien increased its stake in Independent News and Media Plc to 29.9% in 2012.

TABLE 11

Say on Pay Resolutions

Company	Country	Year	Voting item category	Opposition (%)
Belgacom (Proximus)	Belgium	2013	Remuneration report	70.3
CAIRN Energy	UK	2012	Remuneration report	67.0
WPP	UK	2012	Remuneration report	59.5
Safran	France	2012	Two resolutions on RPT[312]	56.4, 55.3
Independent News & Media	Ireland	2012	Remuneration report	56.2
Aviva	UK	2012	Remuneration report	54.4
Heidelberg Cement	Germany	2010	Remuneration System	54.2
Burberry Group	UK	2014	Remuneration report	52.7
Easyjet	UK	2011	Remuneration report	51.6
Pernod Ricard	France	2014	Share option grants	36.0
Carrefour	France	2012	Two resolutions on share (option) grants[313]	32.8, 31.9[314]

During the 2014 Aer Lingus Group AGM almost 50% of the shareholders rejected the remuneration report. However, the voting item passed with a small majority. And during the 2011 Intercell AG (Austria, now Valvena) AGM almost 40% of the shareholders voted against the resolution to grant stock options to the members of the supervisory board as remuneration pursuant to section 98(3) and 159(2)(3) of the Austrian AktG.

Van der Elst and Lafarre (2017) show that in the Netherlands, shareholders may refuse to discharge the (supervisory) board when they do not agree with how the remuneration policy was applied (Corbion NV 2014, Vastned Retail NV 2009, KPN NV 2009, the authors call this 'indirect say on pay' or 'figurative use'). As established in the previous chapter, in the Netherland, shareholders do not have the right to approve the remuneration report. During the 2014 Corbion NV AGM, many shareholders also voted against the re-election of the chairman of the supervisory board. The authors argue in favour of the European say-on-pay proposal: the use of the discharge of the board or the re-election of a board member shows the importance of an opportunity for the shareholders to discuss and express their opinions regarding the remuneration packages of directors once the remuneration policy has been adopted.

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312 Retirement agreements and termination agreements. Voting item 6: '*Approbation d'engagements règlementés soumis aux dispositions de l'article L. 225-42-1 du Code de commerce, pris au bénéfice du Président-Directeur Général et des Directeurs Généraux Délégués en matière de retraite et de prévoyance*' (56.44% against). And voting item 5: '*Approbation d'un engagement règlementé soumis aux dispositions de l'article L. 225-42-1 alinéa 1 du Code de commerce, pris au bénéfice du Président-Directeur Général en cas de cessation anticipée de son mandat social*' (55.25% against).

313 Authorisation to grant share subscription options for personnel or officers of Carrefour and its subsidiaries pursuant to articles L.225-177 *et seq*. FCC and the authorisation to the Board of Directors to grant free share allocations which may or may not be subject to performance conditions of the personnel or officers of Carrefour and its subsidiaries pursuant to articles L.225-197-1 and L.225-197-2 *et seq*. FCC.

314 The percentages of votes against displayed are lower than 33.3%, but this outcome is a result of our calculation method; these percentages are calculated in accordance with the method that is, *inter alia,* used in the UK and Ireland: (votes against)/(votes against + votes in favour)*100 percent. Since the voting items only received 66.3% and 66.5% of the votes in favour, respectively, the two-thirds quota was not met. These resolutions were thus rejected.

Next, we discuss the resolutions regarding changes to share capital. Table 12 shows the rejected resolutions linked to share capital.

TABLE 12

Capital Resolutions

Company	Country	Year	Voting item category	Opposition (%)
Ageas (Fortis)	Belgium	2011	Capital increase	78.5
Befimmo	Belgium	2014	Acquire and pledge shares, authorised capital[315]	36.7
Kering	France	2010-2013	Four resolutions on capital increase	Between 71.1 and 77.2
Intercell (Valvena)	Austria	2014	Capital increase	69.0
Dragon Oil	Ireland	2012	Capital increase	66.4
K+S	Germany	2010	Two resolutions on capital increase	60.7, 43.8
Gemalto	Netherlands	2013	Pre-emption rights, capital increase[316]	55.5, 50.4
Immofinanz	Austria	2010	Two resolutions on capital increase	53.7, 52.5
Essilor Intl	France	2011	Capital increase	51.1
Legrand	France	2012	Capital increase	51.0
EasyJet[317]	UK	2012-2014	Three resolutions on pre-emption rights	Between 42.7 and 44.4
Aer Lingus	Ireland	2010-2014	Five resolutions on pre-emption rights	Between 37.9 and 43.0
Air Liquide	France	2010, 2011	Capital increase: anti-takeover device[318]	35.8, 41.4
Conwert	Austria	2012	Capital increase[319]	35.9
Publicis Group	France	2011	Six resolutions on capital increase	Between 34.8 and 39.0
Infineon Technologies	Germany	2010	Buy back shares	33.8
Anglo American	UK	2013	Pre-emption rights	28.7

315 The third agenda item that was dismissed during Befimmo's extraordinary general meeting was the delegation of power in order to complete the formalities (i.e., granting the necessary powers).

316 Voting item 10a: 'Extension of the authorization of the Board to issue shares and to grant rights to acquire shares in the share capital of Gemalto' was dismissed with 50.4% votes against.

317 Statement of the board of EasyJet with the publication of the voting results of the 2012 AGM: 'The board also regrets that Stelios has chosen to block the two special resolutions (which require a 75% majority). Both are standard AGM resolutions and as the votes clearly show this is not what other shareholders want to see happen.'

318 Delegation of authority, granted for a period of 18 months, to the board of directors to issue free share subscription warrants in the event of a takeover bid for the company.

319 'The existing authorization in accordance with § 4 paragraph 3 of the articles of association of the Company authorizing the Administrative Board to increase the share capital of the Company in accordance with § 38 paragraph 2 and § 63 of the SE Act in conjunction with § 169 of the Stock Corporation Act, until 8 June 2011 by up to a nominal value of EUR 26,674,770 by issuing up to 2,667,477 no-par value bearer shares at a minimum issue price of 100% of the proportionate amount of share capital, in one or several tranches, also excluding subscription rights completely or partially, also by means of indirect subscription rights in accordance with § 153 paragraph 6 of the Stock Corporation Act, for a contribution in cash or in kind, and to determine the issue price and the issue conditions (authorized capital), shall be revoked to the extent of the unused amount.'

Whereas the voting items on the cancellation of pre-emption rights were dismissed during AGMs of EasyJet, Anglo American, Aer Lingus and other companies seen in table 12 with less than 50% of the votes against, in the Netherlands these resolutions passed at the Akzo Nobel NV, Fugro NV, KPN NV, SBM Offshore NV and Wolters Kluwer NV AGMs with shareholder opposition between 26.2 and 47.4%. In contrast to many other countries, in the Netherlands a qualified two-thirds majority is only required if less than 50% of the capital is present during the meeting. If this quorum of 50% is met only a simple majority vote is required. Shareholder attendance rates were higher than 50% at these companies' AGMs.

Besides voting items related to changes in the company's capital and say-on-pay resolutions, some amendments to the articles of association were also dismissed. During the 2011 AGM of the Dutch company SBM Offshore NV, shareholders rejected a proposal containing '[a]mendments on profit and loss' (voting item 7.2). The proposal included an increase of the dividends for preference shares that are used as a protection device by the SBM Offshore trust office. Other examples of resolutions that were dismissed are TNT's 2010 and 2011 AGMs. In 2011 the shareholders' meeting dismissed the proposal to discharge the supervisory board. And in 2010 the proposal to maintain the Dutch *structuurregime* was defeated with more than 82% of the vote. The Aer Lingus Plc proposal to amend its articles of association did not pass for five years in a row, with a shareholders' dissent between 37.6 and 38.7%. In addition to these instances, amendments to articles of association were also dismissed at the AGMs of Peugeot SA in 2013, MAN AG in 2010, Deutsche Boerse in 2011, Conwert in 2013, and the Alstom SA in 2014.

Between 2010 and 2014, the resolution requiring a 75% majority on the authorisation to call general meetings other than AGMs with a minimum 14 days' notice did not pass 4 of the 518 times it was put on the agenda in the UK and Ireland: at the 2012, 2013 and 2014 Easyjet Plc AGMs and at the 2011 Hammerson Plc AGM.

Although relatively few resolutions failed to pass during the observed AGMs, this is not the case for (employee) shareholder proposals. In total, there were 106 shareholder proposals including proposals by employee shareholders and countermotions over the course of 50 AGMs:

TABLE 13

Shareholder Proposals

Country	**# AGMs**
Austria	2
Belgium	0
France	18
Germany	20
Ireland	4
Netherlands	0
UK	5

Shareholders did not put any items on the agenda at the AGMs in the Netherlands and Belgium. In contrast, in France and Germany a relatively high number of shareholder proposals was placed on the agenda. In Germany *any* shareholder may put countermotions on the agenda ex section 126 AktG. Furthermore, section 127 AktG provides that the right to file a countermotion shall apply analogously to a nomination by a shareholder for the election of a member of the supervisory

board or of external auditors. And, in accordance with L.225-71 FCC, at least one member is elected from among employee representatives in case employees hold more than 3% of the share capital. At French AGMs often more than one employee shareholder representative is up for election and only one of these election resolutions is usually adopted by the shareholder meeting.[320]

Virtually none of the 106 shareholder proposals passed, except for some French employee shareholder proposals to elect an employee representative (which was passed to comply with the French legal requirements, *cf. supra* chapter 1), and one shareholder proposal during the 2011 Safran SA AGM. The goal of this shareholder proposal was to bring the clauses of the articles of association in compliance with the wording of article L.225-23 FCC and was supported by the board. Other shareholder proposals were dismissed. For example, at the Allied Irish Banks Plc AGM, Mr. Niall Murphy was nominated by a shareholder to be elected as a board member in 2010 and 2011, but the item did not pass in both years. Both sporadic exercise of the right to add an item to the agenda and their low success rate call into question the relevance of this particular shareholder right in Europe.

A majority of the shareholder proposals concerned board elections. In France, most of the (employee) shareholder proposals concerned director elections. Proposals related to dividends and amendments to articles of association were also placed on the agenda by shareholders in France. The 2012 Société Générale SA AGM agenda included a shareholder proposal regarding a change to the board structure (a shareholder proposed to adopt a two-tier board structure). In Germany, a shareholder proposed a motion of no confidence and/or removal of the chairman of the board of directors. In addition, there were many proposals to postpone or remove items. The shareholder proposals that were put on the agenda in Ireland were either related to director elections or the removal of directors; all these shareholder proposals were added to the Allied Irish Banks Plc agenda. In the UK two shareholder proposals concerned board elections: the other proposals either requested a review of board actions related to a specific project (2010 BP Plc AGM and 2010 Royal Dutch Shell Plc AGM) or were about company financial strategy (2012 3i Plc AGM).

7.2.3. Largest Dissent

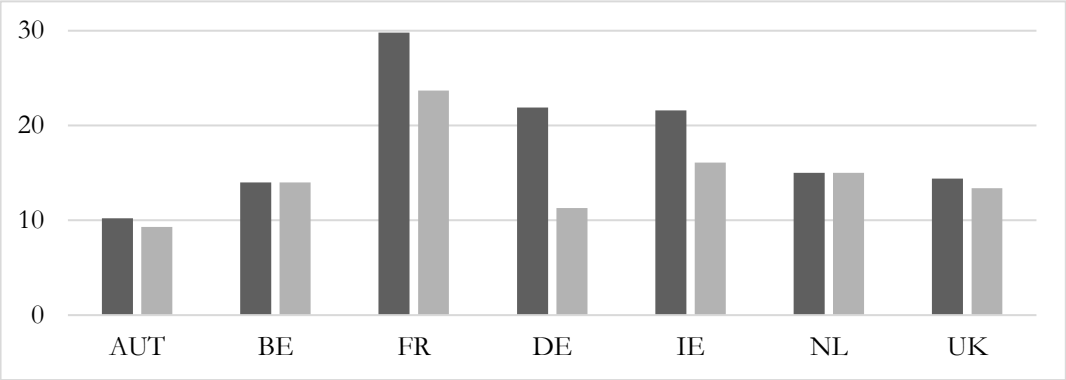
The average highest shareholder opposition per AGM for our complete sample was 17.8%. However, if one excludes (employee) shareholder resolutions and countermotions, the average highest shareholder opposition was 14.6%. When looking at the averages per country in figure 8 – excluding the aforementioned shareholder resolutions and motions – one can conclude that shareholder opposition is relatively large in France and Ireland, and relatively low in Austria. For Germany in particular one can see high shareholder opposition against countermotions since the average highest shareholder opposition is 21.9% when taking into account all resolutions, but only 11.3% when these countermotions are excluded. Since the shareholders of the Dutch and Belgian companies in our sample did not add any items to the agenda, both variables yield the same average.[321]

[320] For example, during the 2012 AXA SA AGM and the 2013 Total SA AGM 8 and 7 employee shareholder representatives were up for election, respectively. Only one of these representatives was appointed by the AGM.

[321] Royal Dutch Shell is considered a UK company.

FIGURE 8

Opposition rates excluding shareholder proposals and countermotions (left bar) and including (right bar) per country in %



In the following analyses of shareholder dissent per voting item category, we excluded shareholder resolutions. Director (re-)elections often receive the highest shareholder opposition in Austria: at 42 AGMs these proposals received the highest percentage of votes against (7.5% on average). And, at 29 Belgian AGMs director (re-)elections also receive the highest percentage of votes against with an average opposition of 8.5%. Director (re-)elections also receive the highest opposition during the most AGMs in Germany: 38 times with a 13.4% average against. Share increases are also often opposed in Germany as these voting items received the highest opposition during 36 AGMs with 11.4% of the votes against. In Ireland director (re-)elections often also receive the highest opposition (32 AGMs with an average of 17.0% of the votes against), whereas in the UK the most opposed resolution was the proposal to shorten the notice period for the next GM to 14 days: at 188 AGMs this voting item received the highest opposition with a 9.5% average. Say-on-pay resolutions also received relatively often the highest opposition in the UK (at 137 AGMs with an average of 19.6%), however. In France resolutions regarding capital increases were the least popular: at 45 AGMs these resolutions receive the highest shareholder opposition with an average of 26.6%. Besides capital increase resolutions director (re-)elections also received relatively often the highest percentage of votes against (during 33 AGMs with 17.9% against on average), just like related party transactions and say-on-pay resolutions. The latter voting items received the highest opposition at 31 and 33 AGMs in France with an average percentage of 27.2 and 20.5%, respectively. the Netherlands is the only country where shareholders largely oppose the waiver of pre-emption rights. In 53 AGMs this item received the highest shareholder opposition with a 17.5% average.

Director (re-)elections, say on pay resolutions, capital increases and proposals regarding the notice period for GMs often face the highest shareholder opposition. In table 14, the mean and median opposition and standard deviation are shown for the different categories of resolutions.

TABLE 14

Mean shareholder dissent per category in sample[322]

Resolution Category		**# AGMs on the agenda**	**Mean dissent (%)**	**Median dissent (%)**	**Standard deviation dissent (%)**
i. Director (re-)elections		1,109	6.6	3.5	8.8
ii. Say on Pay	Overall	1,017	8.3	3.7	11.0
	Remuneration report	641	7.5	3.6	10.3
	Other say on pay	512	8.0	3.1	11.0
	Remuneration policy and system	257	7.3	3.3	9.7
	Incentive plans and share (option) grants authorization	161	7.9	3.77	9.4
	Individual remuneration	39	8.8	5.6	9.8
	RPT regarding say on pay	53	22.5	20.2	14.2
	Supervisory and non-executive	194	1.9	0.3	4.8
iii. Capital increase		936	8.3	5.0	10.5
iv. Waiver of pre-emption rights		851	6.2	1.6	10.4
v. Share buybacks		940	1.77	0.4	4.4
vi. Cancel treasury shares		198	2.2	0.5	5.1
vii. Amendments to the articles		355	4.2	0.3	11.5
viii. Financial statements[323]		999	0.4	0.1	1.2
ix. Dividends		1,053	0.3	0.0	1.3
x. Discharge		483	1.6	0.43	4.6
xi. Auditors		1,002	1.4	0.6	2.9
xii. RPT		126	6.6	2.2	9.6
xiii. Enterprise agreements		46	0.2	0.0	0.3
xiv. GM 14 days		518	7.5	7.1	5.1
xv. Political donations		264	2.1	1.7	1.7

Note: the table reports the different resolution categories considered in this study. Column 2 describes the number of AGMs in the sample for which a resolution from a particular category was on the agenda and column 3 describes the sample average of the highest dissent per AGM per category. Column 4 describes the sample median of the highest dissent per AGM per category and the last column displays the standard deviation of the sample median (column 3).

Table 14 clearly shows that director (re-)elections, say-on-pay resolutions, capital increases and proposals regarding the notice period for GMs are frequently the most controversial. Related party transactions and the waiver of pre-emption rights also receive high shareholder opposition. One may also notice that the mean opposition to amendments of the articles of association is

[322] The table displays the sample average of the highest dissent per AGM per category.

[323] Shareholders in German and Austrian companies as well as the shareholders of the Dutch company Royal Imtech NV were not able to vote on the approval of the annual financial statements at the 2013 AGM: this resolution was put on the agenda as a discussion item.

substantially higher (4.2) compared to the median (0.3), and the standard deviation is quite high (11.4). Table 15 shows the mean opposition to these most controversial resolutions per country:

TABLE 15

Average (highest) dissent rates per country (mean dissent in %, # of AGMs between parentheses)

Resolution Category	**Austria**	**Belgium**	**France**	**Germany**	**Ireland**	**Netherlands**	**UK**
i. Director (re-) elections	5.3 (73)	6.3 (76)	11.8 (167)	8.7 (95)	10.5 (90)	2.1 (105)	4.9 (503)
ii. Say on pay overall	2.6 (80)	9.8 (62)	16.4[c] (143)	7.0 (81)	6.2 (75)	4.5 (72)	7.9 (504)
iii. Say on pay: remuneration report	10.3 (6)	10.3 (55)	20.9 (2)	-	5.7 (74)	-	7.4 (504)
iv. Say on pay: *other*	2.2 (75)	2.8 (21)	16.4 (143)	7.0 (81)	6.3 (12)	4.5 (72)	5.6 (108)
v. Capital increase	10.3 (36)	14.6 (23)	16.3 (132)	9.1 (77)	3.8 (64)	8.4 (99)	6.2 (505)
vi. Waiver of pre-emption rights	9.0 (37)	11.4 (4)	14.1 (122)	9.3 (87)	5.2 (64)	12.5 (97)	1.9 (440)
vii. RPT	-	-	6.9 (120)	1.1 (1)	-	-	1.7 (5)
viii. GM 14 days	-	-	-	-	5.0 (66)	-	7.8 (452)
ix. Discharge	0.69 (104)	0.88 (84)	2.4 (12)[a]	2.1 (160)	3.5 (5)[b]	2.3 (118)	-

[a] These observations are from the 2010-2014 AGMs of St Microelectronics NV (incorporated in the Netherlands, but listed to the CAC-40), 2010-2014 AGMs of Airbus Group SE (incorporated in the Netherlands, but listed to the CAC-40), and the 2010 and 2011 AGMs of Publicis Groupe SA.
[b] These observations are from the 2010-2014 AGMs of Aryzta AG, which is listed to the Irish Stock Exchange, but incorporated in Switzerland (and also listed on the Swiss Stock Exchange.
[c] Due to rounding the same as voting category iv.

Remarkably, proposals to waive pre-emption rights receive the highest average opposition of all controversial voting item categories in the Netherlands, whereas in the UK and Ireland, these resolutions do not receive that much shareholder opposition. Proposals linked to capital increases also receive much less opposition in the UK and Ireland compared to the continental European countries. It may be the case that in concentrated ownership structures, large shareholders have larger incentives to vote against these capital resolutions, as approval may result in a dilution of their (perhaps *de facto* controlling) stakes. Small shareholders would not have these incentives.

Whereas director (re-)elections are in theory the most important voting items, in practice these resolutions usually do not receive the highest voting dissent. The only country in which this was the case was Ireland. Average shareholder opposition to director (re-)elections is however, relatively high compared to other, less controversial voting items. In France, average shareholder opposition to director (re-)elections is also high, but this is the case for other resolution categories as well, especially for say-on-pay resolutions. In fact, say-on-pay resolutions receive high dissent rates in all Member States. For instance, in the UK, shareholder opposition to these resolutions is higher on average than to other resolutions. It seems that shareholders care about these resolutions.

Capital resolutions also receive high opposition rates, especially in Belgium and France. The dissent rates for discharging management and supervisory board members are not very high on average, but the sample average standard deviation is relatively high (*cf. supra*, reported in table 14).

Lastly, in chapter 1 we discussed the implementation of the new UK Listing Rules for the election of independent directors in controlled companies (*cf. supra*, section 5.2.1 of chapter 1). These new rules were introduced in May 16, 2014, and as a result, our sample does not contain a lot of information on these new rules. Only two controlled FTSE-100 companies in our sample reported voting polls excluding controlling shareholders: Associated British Foods Plc and British Sky Broadcasting Group Plc. The dissent rates for the voting polls of the outsider shareholders are not substantially larger for the latter company (dissent rates range from 0.40-1.88). Associated British Foods Plc reports an outsider shareholder dissent rate of 15.2% against the re-election of one of the independent directors. The total shareholder dissent rate is only 4.9%. For the other independent directors, dissent rates are not substantially larger. We highly recommend further research to examine the effects of this new regulation in the UK.

7.3. Concluding Remarks

Based on the legal framework of shareholder voting rights determined in chapter 1, we evaluated shareholder voting behaviour. We found large differences between Member States. The 1,255 AGMs in our sample had, on average, almost 17 voting items on their agendas, with the highest averages in the UK and France. In contrast, in Austria, agendas were relatively short with around 10 agenda items on average. Shareholders of UK companies may (re-)elect on average more than nine directors per meeting. In contrast, in Austria and Germany this is only 2.3 or 2.5 directors on average, respectively. In all Member States, only few voting items did not pass; of the over 21,000 voting items examined in this study, only 166 voting items were dismissed during 96 AGMs of the 1,255 AGMs (without shareholder proposals and countermotions, this was only 67). Only three director (re-)elections were not approved. The remuneration report was rejected slightly more often, namely at eight of the 641 meetings. Resolutions regarding changes to share capital were more often dismissed; 33 times in total.

When looking at shareholder opposition rates, we found that the average highest shareholder opposition per AGM was 17.8% in total. Resolutions including director (re-)elections, related-party transactions, say-on-pay proposals, capital increases and proposals regarding the notice period for GMs face the highest shareholder opposition. However, these voting items do not receive any opposition higher than 9% on average. Other voting items such as the approval of the financial statements face virtually no shareholder opposition. Note that we only considered the voting behaviour of all shareholders in this section. When excluding corporate insiders, and thus only focussing on outsider shareholders, these opposition figures may differ. In the next sections of this chapter, we first investigate the types of shareholders that are present in the listed companies in our sample (section 8). Afterwards, in section 9, we analyse the voting behaviour of outsider shareholders.

8. TYPES OF SHAREHOLDERS

8.1. Methodology

When analysing AGMs in practice, one also needs to consider the different types of shareholders. Although corporate law theory generally assumes that (small) shareholders have the same interests ('fictional shareholders' per Greenwood, 1996), shareholders are certainly not identical corporate actors and they differ not only in their (voting) stake. In most countries, institutional investors have some responsibility to monitor management and act as active shareholders. Over the past years, the ownership stakes for these investors have significantly increased. The dominant role of institutional investors in financial markets is widely recognized.[324] The presence of institutional investors would even be a solution to the shareholder free-rider problem according to some authors.[325]

In the US, private pension funds are mandated to vote under the Employee Retirement Income Security Act (ERISA).[326] In Europe, too, institutional investors play an important role in shareholder engagement.[327] The importance of institutional investors was already recognized in section 6.9-6.12 of the UK Cadbury Report (1992), in particular in provision 6.10 ('[g]iven the weight of their votes, *the way in which institutional shareholders use their power to influence the standards of corporate governance is of fundamental importance* […]'), provision 6.11.2 ('[i]nstitutional investors *should make positive use of their voting rights*'), and provision 6.12. ('[*w*]*e recommend that institutional investors should disclose their policies on the use of voting rights*'.[328] The Greenbury Report (1995) and the Hampel Committee Report (1998) also place emphasis on institutional investor voting. Nowadays, the UK Stewardship Code establishes a framework to determine the monitoring role for institutional investors, namely asset owners and asset managers.[329] Principle 6 of the Stewardship Code states that '[i]nstitutional investors should seek to vote all shares held'.[330] These shareholders should not automatically support the board. The DCGC 2008 contains specific rules for institutional investors as well,[331] but does not require institutional investors to vote, though they must make their voting policy public. The BCGC explicitly mentions the important role of institutional investors and one of the guidelines of provision 8.5 requires that companies 'should ask institutional shareholders and their voting agencies for explanations on their voting behaviour'. The ACGC mentions institutional investors as well. In contrast, the German *Kodex* (GCGC) and the FCGC of Listed Corporations do not discuss institutional investors explicitly. However, in Germany, article 32(1) of the former *Investmentgesetz* stated that institutional investors 'should' exercise their shareholder rights 'themselves'. According to German scholars this article implies a general duty to vote, except

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[324] For example, see the Green Paper on Corporate Governance (EC (2011a) Green Paper The EU Corporate Governance Framework, *COM (2011) 164 final*. 5 April 2011). Also see Van der Elst and Vermeulen (2011); Shleifer and Vishny (1986); Gillan and Starks (2007).

[325] For example, see Heard and Sherman (1987); Huddart (1993); Shleifer and Vishny (1997).

[326] See Mallin (2001); McCahery, Sautner and Starks (2014).

[327] In this respect one may also refer to the UCITS (Undertakings for the Collective Investment in Transferable Securities) Directive (Directive 2009/65/EC, amended by 2014/91/EU) that stipulates, *inter alia*, monitoring rules regarding these funds that also affect institutional investors.

[328] Cadbury Report (1992) The Financial Aspects of Corporate Governance, 1 December 1992, 6.9-6.12. (<http://www.ecgi.org/codes/documents/cadbury.pdf>) *Emphasis added.*

[329] The UK Stewardship Code, September 2012, p. 2.

[330] The UK Stewardship Code, September 2012, p. 9.

[331] Best practice principles IV.4.1-IV.4.3 of DCGC 2008. The DCGC 2016 contains some rules for institutional investors as well, including principles 4.3.5-4.3.6.

in certain circumstances.[332] Since 22 July, 2013, the statutory basis is section 94(1) of the new German Capital Investment Code (*Kapitalanlagegesetzbuch*). In Ireland, Appendix 4 of the Irish CGA states that the Irish Stock Exchange (ISE) follows the UKCGC,[333] including some additional provisions outlined in the Irish CGA. The latter does not make reference to the UK Stewardship Code, and it does not contain special provisions for institutional investors. A relatively large number of financial institutions have published a statement of support for the Stewardship Code, however.[334]

In addition to these national corporate governance codes, principle II of the OECD Principles of Corporate Governance (2004 edition)[335] requires that institutional investors 'disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights' (principle II.F.1) as well as 'how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments' (principle II.F.2).

Institutional investors remain the focus in the European Union (or, as Van der Elst and Vermeulen (2011, p. 11) call it, 'corporate governance 2.0'). As we have seen in chapter 1, on April 9, 2014, the EC proposed a revision to the Shareholder Rights Directive. One of the key elements of this proposal was the increased emphasis on the role of institutional investors and asset managers.[336] For example, proposed article 3f requires institutional investors to have an 'engagement policy', that must contain the various actions mentioned in article 3f(1). Paragraph 3 of article 3f adds that '[i]nstitutional investors and asset managers shall, for each company in which they hold shares, disclose if and how they cast their votes in the general meetings of the companies concerned and provide an explanation for their voting behaviour'. The Commission also adds definitions of institutional investors and asset managers in article 2(f) and (g), respectively.

Institutional investors are thus generally likely to exercise their voting rights during AGMs.[337] Zetzsche (2008) even argues that the economic information cost argument (*cf. supra*, introduction chapter) does not hold for institutional investors. However, according to Mallin (2001) evidence shows that institutional shareholder voting is lower than might be expected, though the research Mallin refers to is quite old.[338] However, as Strand (2012) notes, institutional investors prefer private

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[332] '*Die Kapitalverwaltungsgesellschaft soll das Stimmrecht aus Aktien von Gesellschaften, die ihren Sitz im Geltungsbereich dieses Gesetzes haben, im Regelfall selbst ausüben.*' Following OECD (2011), p. 116.

[333] It states that: '[t]he ISE recognises that the UK Corporate Governance Code (formerly the Combined Code) has set the standard for corporate governance internationally. It is regarded as being the pre-eminent corporate governance code and is widely emulated'.

[334] List can be retrieved from the website of the FRC, <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Stewardship-Code/UK-Stewardship-Code-statements.aspx>. (accessed in March 2015).

[335] The 'Principles of Corporate Governance' document was updated in 2015 (OECD, 2015). The relevant principles are included in Principle III in this new version.

[336] EC (2014a) Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement*, COM (2014) 213 final.* April 9, 2014.

[337] Çelik and Isaksson (2014) argue that ownership engagement differs among institutional investors and is based on the business models of institutional investors.

[338] The author refers to Pension Investment Research Consultants (1996) PIRC Shareholder Voting Guidelines, March 1996, and Pensions Investment Research Consultants (1998) Proxy Voting Trends at UK Companies, December 1998. The author also refers to earlier own work: Mallin (1995) and Mallin (1996).

negotiations, which may actually impede AGMs as a decision-making body as well (i.e. the side-stepping problem, see Strand, 2012, p. 16).

Given the above considerations, we distinguish five main categories of (ultimate) shareholders in this study;

i) *Corporate insiders*, including (close) family, board members, founders and former board members, trust offices and parent companies or other holding structures and pyramid structures;

ii) *Institutional investors and other funds*, including banks, pension funds, investment funds and insurance companies, asset managers and other financial institutions or portfolio investors;

iii) *Non-financial companies*, including non-financial companies that are not considered corporate insiders;

iv) *Governments*, including state-owned enterprises and sovereign wealth funds (ultimate owner);

v) *Other*, including for example individual investors who are not corporate insiders (category "i)").

We use only one category for institutional investors and other funds, though there are many different types of institutional investors and numerous ways to divide them into categories.[339] Renneboog and Szilagyi (2013) distinguish between pressure-sensitive institutional investors, which include banks and insurance companies, and pressure-insensitive institutional investors, which include pension and labour union funds, investment funds and their managements, and independent investment advisors. And, Belcredi, Bozzi and Di Noia (2013) divide, '[c]onsistent with previous literature', institutional investors into two categories, i) financial institutions such as a bank or insurance company, and ii) private equity funds (p. 384). Whereas these categories seem logical, in practice they are not. Big financial institutions often engage in more than one activity and have several departments, which means that categories of institutional investors can overlap. It is hard to say whether there are 'Chinese walls' between departments or business units and to identify the ultimate type of institutional investor that holds a particular amount of voting rights.

In section 3.1 we explain that we assume that blockholders exercise their voting rights in order to be able to calculate small shareholder attendance. Blockholders are defined as shareholders possessing more than 5% of the voting rights: this is the lowest common disclosure threshold in all countries in our sample. Currently, companies in the Netherlands, Germany and the UK must disclose voting stakes of 3% or more. In Austria this threshold is four%.[340] Moreover, in many countries companies may set additional thresholds in their articles of association. In addition, many companies provide an overview of the number of shares (an accompanying voting rights) that each director has.[341] Hence, annual reports may disclose voting stakes of shareholders that are lower

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339 See also Çelik and Isaksson (2014). Just a simple example; the definition of institutional investors in the UK Stewardship Code also includes asset managers, whereas the European proposal to amend Directive 2007/36/EC contains a separate definition for asset managers and institutional investors.

340 Germany: paragraph 21 *Wertpapierhandelsgeset* (WpHG). UK: Rule 5.2.1 Disclosure and Transparency Rule (DTR). The Netherlands: chapter 5.3 Financial Supervision Act (Wft). Austria: paragraph 91 Austrian Stock Exchange Act (BorseG).

341 Shares are usually part of the (executive) director remuneration package. The Prospectus Directive (2003/71/EC) requires companies to disclose the number of 'securities offered, allotted or to be allotted to existing or former directors or employees by their employer which has securities already admitted to trading on a regulated market or by an affiliated undertaking' in their prospectus. Several national laws and soft laws

than 5% that are not included in our blockholder measure. We include all shareholdings (larger than 1%) that are disclosed in company annual reports in our shareholder type variables to include as much information as possible. Unfortunately for some companies these variables are less detailed than for other companies.

8.2. Descriptive Analysis

In the previous section we defined five categories of ultimate shareholders. In this section we will further explore the different types of shareholders in a comparative analysis. Selecting the category to which a shareholder belongs is not always obvious. For instance, shareholders that exercise control over companies in a corporate group structure are considered insiders. And, for example, over 91% of the shares of Uniqa Insurance Group AG are hold by the Raiffeisen Zentral Bank, Austria Privatstiftung and Collegialität Privatstiftung syndicate. We classified this syndicate of shareholders as 'corporate insiders'. Furthermore, the largest shareholder of Delta Lloyd NV, Aviva Plc, is also classed as a corporate insider. The same holds for, *inter alia,* Legrand SA, where Wendel Group (and KKR) held a majority stake in 2010 and 2011. In 2013, Wendel Group sold its remaining shares of Legrand SA (Reuters, 2013).

For 331 observations a corporate insider was the largest shareholder; these shareholders have an average stake of 38.2%. Institutional investors are often the largest shareholders in the sample. In 649 observations, the largest shareholder was an institutional investor with an average stake of 9.3%. Non-financial companies were the largest shareholders for 95 observations (average stake of 35.8%) and in 140 cases, actors from the 'government' category had the largest stake with 37.1% on average. Only 34 observations showed a different largest shareholder.[342] These numbers show that the average stake of the largest shareholder is substantially lower when such a shareholder is an institutional investor.

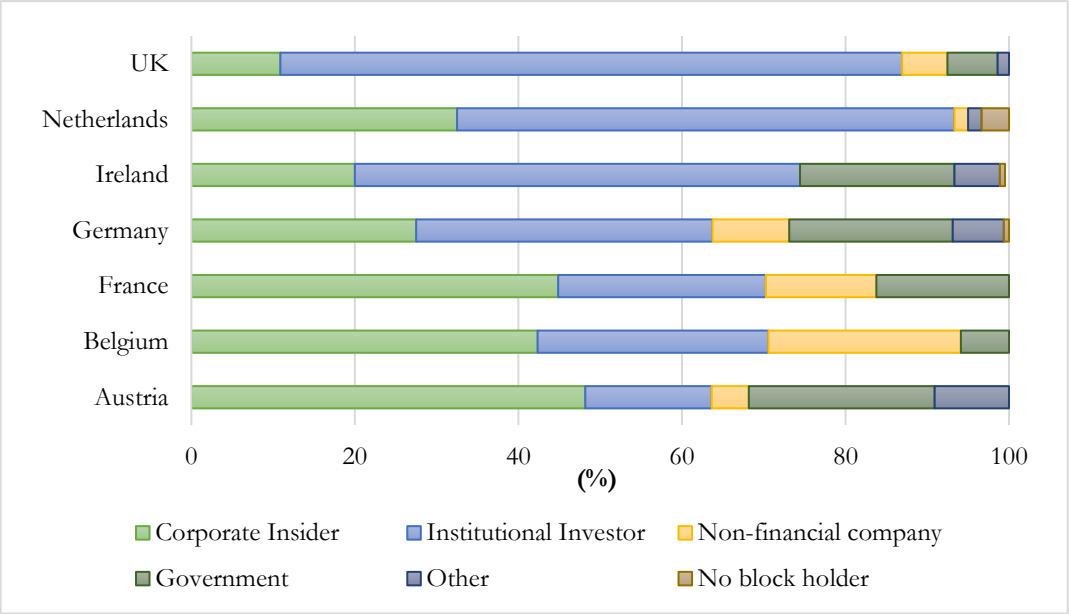
When we look at the largest type of shareholder per country we can conclude that there are substantial differences between countries. The most common largest shareholder in Austria is the corporate insider (for 53 observations). The same holds for France and Belgium. In contrast, in the UK, Netherlands, Ireland and Germany institutional investors often hold the largest stake. Hence, institutional investors are often the largest shareholders, but the average stake of these shareholders is relatively small with 8.5% for the UK and 13.6% in the Netherlands.

(corporate governance codes) require companies to show the number of shares executive directors are rewarded in their remuneration reports.

[342] The total amount of observations is 1,249 since six companies did not disclose any shareholdings.

FIGURE 9

Frequency (%) of type of largest shareholders per country



Further analysis in this section not only takes into account the largest shareholder, but the *aggregate stake of all shareholders for each type per observation*. Institutional investors are present in 966 observations and have an average aggregate *reported* stake of 16.0%. Corporate insiders are present in 441 observations and have an average total stake of 31.6%. Only 164 observations disclosed shareholdings by non-financial companies, with an average aggregate stake of 24.2%. The highest aggregate stake is the over 77% stake of Penoles in Fresnillo Plc in 2010-2013. In 2014 Penoles reported a stake of 75%. The last large category of shareholders is 'Governments' and can be found in 228 observations with an average stake of 26.6%. The largest aggregate stake reported for this category is also the largest stake of the complete sample; the National Pensions Reserve Commission owned around 99.8% of Allied Irish Banks in the period 2012-2014. This commission consists of seven members appointed by the Minister of Finance.[343] A 92.8% stake in Allied Irish Banks was reported for 2011. The Minister for Finance also had a 99.2% stake in Permanent TSB Group Plc between 2012 and 2014.

We now look at the shareholder structures of the companies in our sample. Table 16 provides an overview:

[343] In compliance with the Irish NPRF Act, the Minister for Finance may only appoint commissioners who have acquired substantial expertise and experience at a senior level in any of a number of listed areas including investment or international business management, finance or economics, law, actuarial practice, and accountancy and auditing.
Following information at (<http://www.nprf.ie/Commission/commission.htm>). (accessed in March 2015).

TABLE 16

Shareholder structure per country (in %, amount of observations between parentheses in 'Mean stake (%)'-column)

Country		**Mean stake %**	**Standard deviation %**
Austria	Corporate Insiders	38.1 (70)	28.5
	Institutional Investors	13.1 (46)	5.8
	Non-financial companies	12.2 (14)	7.6
	Government	47.9 (26)	17.9
	Other	21.7 (6)	8.2
Belgium	Corporate Insiders	40.8 (40)	18.4
	Institutional Investors	11.6 (52)	6.5
	Non-financial companies	42.3 (25)	19.8
	Government	36.3 (8)	28.0
	Other	-	-
France	Corporate Insiders	20.8 (139)	21.0
	Institutional Investors	12.5 (101)	8.4
	Non-financial companies	14.7 (62)	15.4
	Government	19.0 (69)	23.1
	Other	2.2 (2)	1.0
Germany	Corporate Insiders	36.3 (49)	19.9
	Institutional Investors	11.2 (118)	6.8
	Non-financial companies	32.2 (22)	23.5
	Government	21.7 (41)	11.4
	Other	14.7 (12)	9.6
Ireland	Corporate Insiders	19.5 (31)	17.4
	Institutional Investors	20.8 (79)	10.7
	Non-financial companies	2.8 (3)	1.4
	Government	49.5 (24)	35.4
	Other	17.2 (11)	8.4
Netherlands	Corporate Insiders	38.9 (46)	21.5
	Institutional Investors	14.67 (98)	10.5
	Non-financial companies	19.0 (3)	14.7
	Government	7.6 (7)	2.4
	Other	10.4 (5)	1.9
UK	Corporate Insiders	37.8 (67)	22.8
	Institutional Investors	18.2 (477)	9.4
	Non-financial companies	30.1 (35)	23.8
	Government	20.8 (53)	19.6
	Other	15.6 (27)	25.2

Note: the table shows the average aggregate stake for each type of shareholder for each country. The numbers here only consider the reported stakes; if a particular company did not report any stake for a particular type of shareholder, it was not included in the average.

The largest average aggregates stakes can be found in Ireland and Austria in the 'governments; category with 49.5 and 47.9%, respectively. For both countries the number of observations in this category is relatively small at only 24 and 27 respectively. In Belgium, stakes in the 'non-financial companies' category are relatively large with an average of 42.3%. However, here too the amount

of observations is limited to only 25. The corporate insider stakes in most countries are relatively large. Institutional investors are present in 477 of the 505 UK observations. In France, corporate insiders had stakes in 139 company observations, but the average stake was lower than in other countries.

As expected, the shareholder type analysis this section has shown that company ownership structures differ substantially among Member States. We also have seen that corporate insiders, governments and non-financial companies usually have larger stakes than institutional investors. In countries with high ownership concentrations such as Austria and Belgium the presence of these shareholders was relatively high. In contrast, in the UK ownership concentration was generally low and a large majority of the companies had institutional investors as their largest shareholders.

8.3. Concluding Remarks

In this paragraph, we focused on the types of blockholders in each country. For this we defined 5 shareholder categories; i) Corporate insiders, including (close) family, board members, founders and former board members, trust offices and parent companies or other holding structures and pyramid structures; ii) Institutional investors and other funds, including banks, pension funds, investment funds and insurance companies, asset managers and other financial institutions or portfolio investors; iii) Non-financial companies, including non-financial companies that are not considered corporate insiders; iv) Governments, including state-owned enterprises and sovereign wealth funds (ultimate owner), and; v) Other, including for example individual investors who are not corporate insiders (category "i)").

Due to an information problem, i.e., only voting stakes of shareholders are disclosed that passed a certain threshold (*cf. supra*, for example, section 4 and 5 of this chapter), we largely focused on blockholder types in this part of the research. We found that institutional investors are often the largest shareholder in the UK, but with relatively low stakes. In contrast, in Austria, France and Belgium, corporate insiders usually had the highest ownership stakes. It seems the presence of corporate insiders as the largest shareholder and ownership concentration are positively related

9. OUTSIDER SHAREHOLDER OPPOSITION

9.1. Methodology

Our analysis in the previous paragraph provides insights into shareholder voting behaviour. We cannot yet draw any conclusions on small shareholder voting behaviour.[344] In contrast, it is possible to make a distinction between 'insider' and 'outsider' shareholder voting behaviour. Shareholders are considered insider shareholders in this study when they are (very) likely to support management proposals. These insider shareholders, or corporate insiders as we designated them in the previous

[344] Although it is plausible to assume that blockholders always attend AGMs (*cf. supra,* section 4 of this chapter) we cannot assume that large shareholders always vote in favour, neither always against. One may argue that (some) blockholders have means to discuss their opinion with the corporate boards prior to any shareholders' meeting. These shareholders are in regular and close contact with corporate boards. It is likely that the boards present and discuss with these shareholders the agenda items before these are brought to a vote. Where appropriate, boards will amend the proposals to avoid disapproval of these shareholders and consequently of the general meeting. However, this would definitely not lead to the conclusion that all blockholders always vote in favour of management proposals.

section, include trust offices,[345] board members and founders, companies in a group structure and other blockholders that are likely to support the company board. When large insider shareholders (or corporate insiders) are present, agenda items that may be unacceptable to outsider shareholders can still be approved by large majorities. In particular, this can be the case for say-on-pay resolutions and (other) related party transactions.

Outsider shareholder dissent is calculated as follows (following Van der Elst and Lafarre, 2017):

> Outsider shareholder dissent
> = (relative shareholder opposition) / (total percentage represented by outsider shareholders) *100%
> = (relative shareholder opposition) / (100% – relative amount of votes represented by the summed voting block of all corporate insiders) *100%,

where the 'relative amount of votes represented by the summed voting block of all corporate insiders' is calculated as[346]:

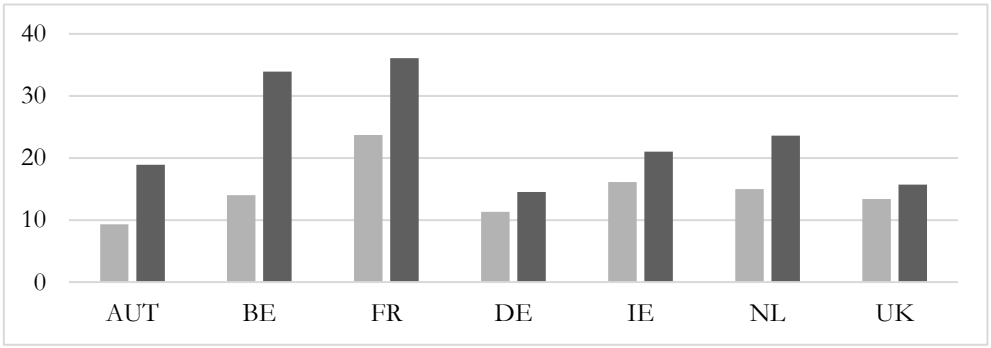
> Relative amount of votes represented by the summed voting block of all corporate insiders
> = (summed voting block of all corporate insiders) / (total relative voter turnout) *100%.

9.2. Descriptive Analysis

The highest overall shareholder opposition – excluding (employee) shareholder resolutions and countermotions – is on average 14.6%. However, the highest outsider shareholder opposition is 20.9%, which is significantly higher. Figure 10 shows that in Belgium and France, average outsider shareholder opposition is substantially larger than overall shareholder opposition. In the UK, where there are in general less insider shareholders, this difference is relatively small.

FIGURE 10

Average largest overall and outsider shareholder dissent per country (%)



[345] A particular kind of large insider shareholder in the Netherlands is the trust office (in Dutch: *stichting administratiekantoor*). For a calculation of their stakes, *cf. supra*, section 8 of this chapter.
[346] This formula starts from the assumption that insider shareholders attend AGMs.

Table 17 shows that the average shareholder opposition is significantly larger when we account for insider shareholders.[347] We included the controversial voting items from table 14 (*cf. supra*, section 7.2.3):

TABLE 17

Outsider Shareholder Opposition

Resolution Category	**# AGMs**	**Mean Outsider opposition (%)**	**Mean opposition all (%)**	**Percentage increase (%)**
i. Director (re-)elections	1,105	10.4	6.6	57.6
ii. Say on pay: overall	1,014	12.4	8.4	47.6
iii. Say on pay: remuneration report	640	10.2	7.5	36.0
iv. Say on pay: *other*	510	12.9	8.1	59.3
v. Capital increase	936	11.7	8.3	41.0
vi. Waiver of pre-emption rights	850	9.6	6.2	54.8
vii. Related-Party transactions[348]	126	11.2	6.6	69.7
viii. GM 14 days	518	8.2	7.5	9.3
ix. Amendments to the articles	355	6.6	4.2	57.1

Table 17 shows that many resolutions experience a substantial increase in shareholder opposition when insider shareholders are considered. 'GM 14 days', only present on UK and Irish company agendas, shows the smallest average percentage increase of only 9.3%. And the percentage increase of opposition to resolutions regarding the remuneration report is relatively small: UK companies, which generally have lower ownership concentration and less insider shareholders present, largely influence these average percentages. Table 17 shows that shareholder opposition regarding director (re-)elections and 'other' say on pay increases by more than half on average when accounted for insider shareholders. One may see table A.2. in the appendix to this chapter for the descriptives of outsider shareholder opposition per country.

Many resolutions were dismissed by outsider shareholders. For example, three Heineken proposals would not have been passed without the participation of the large controlling insider shareholders. The largest opposition by outsider shareholders was found at the 2011 Heineken NV AGM. At this meeting, 98% of the outsider shareholders voted against the amendments to the remuneration policy. Outsider voters also rejected voting items concerning remuneration were also rejected at the 2010 and 2013 Heineken general meeting. The 2014 Colruyt NV AGM provides another example of this situation: at this AGM, around 17% of the present shareholders voted against the remuneration report. However, if we take into account the stake of the controlling block of insider shareholders (the Colruyt Family and Groep Sofina) over 85% of the present outsider shareholders dismissed this resolution. And almost 82% of the outsider shareholders present at the

[347] We excluded five observations from this analysis since the total voting stakes of corporate insiders for these observations were larger than the total shareholder turnout. These observations are Strabag (2014); Uniqa Insurance Group (2012); D'Ieteren (2012); KBC Groep (2011) and; Metro ST (2011). We also excluded the 2010 AGM of the Belgian company GBL from this analysis.

[348] Not related to directors.

2014 Raiffeisen Bank AGM voted against the creation of new authorised capital, whereas total shareholder opposition was only around 13%. Total shareholder opposition to the authority to issue convertible bonds and cancel subscription rights during the 2013 Vienna Insurance Group AGM was only 13.5%, whereas the outsider shareholder opposition was over 91% when considering the 70% ownership stake of Wiener Stadtische Versicherungsverein. These are just a few examples of resolutions that would not have passed without the participation of insider shareholders. Our data clearly indicates that outsider shareholder opposition is substantially higher, obviously especially in countries that have ownership structures with large insider shareholders such as Austria and Belgium.

9.3. Concluding Remarks

In section 7 of this chapter, we discussed shareholder opposition for different agenda item categories and found that even the most important voting items did, on average, receive no opposition higher than 9%. However, when excluding corporate insiders, we found that opposition rates significantly increased; for example, the say on pay categories received over 12% opposition from outsider shareholder on average. In addition, more resolutions would have been dismissed if outsider shareholders could solely determine the voting outcome. This raises important questions, such as whether large insider shareholder should be excluded from voting in certain corporate decisions and/or companies should pay more attention to outsider shareholder opinions (*cf. infra,* section 10.2). At the very least, these results indicate that shareholders do not always blindly follow the corporate board's proposals.

10. CONCLUSIONS AND DISCUSSION

10.1. Conclusions

The aim of this chapter was to evaluate voter turnout and (small) shareholder behaviour during AGMs in Europe in a descriptive setting. To do so, we constructed a sample of AGMs of listed companies from seven different European countries during a period of five consecutive years. As we have seen in the introduction, legal and economic theory suggest that one of the problems with shareholder voting in AGMs is low turnout; low attendance undermines the theoretical monitoring function of AGMs, and, moreover, may provide large shareholders with a *de facto* majority stake. The latter is especially relevant for countries with more concentrated ownership structures. But are these attendance rates indeed that low nowadays? How did they evolve over time? What are the relevant characteristics of AGMs in the European Member States? These were the questions addressed, amongst others, in this chapter.

We conclude that there is an overall increasing trend in voter turnout rates in AGMs in Europe, which includes both total shareholder voter turnout rates and small shareholder voter turnout rates. Our findings correspond to existing research that studies voter turnout rates in earlier periods. The total shareholder voter turnout rates in Belgium, Austria and Germany are relatively low compared to current rates in the UK and Ireland. For Belgian companies, there was a sharp increase from an average total turnout rate of 46.4% in 2010 to almost 60% in 2014. France and the Netherlands show the highest turnout rates of all continental European countries in our sample for the year 2014. If one excludes the Dutch companies that have not listed all their shares, but issued depository receipts, the average voter turnout in the Netherlands over the 2010-2014 is only 60.7%.

In terms of small shareholder voter turnout rates we can conclude that there are some substantial differences among countries as well. In the UK small shareholder turnout rates are relatively high, around 60% for the entire sample period. In contrast, in Belgium small shareholder turnout rates are only 9.3 and 9.4% in 2010 and 2011, but increased to over 30% in 2014. AGMs of Austrian companies have a relatively low small shareholder turnout rate. Again, France and the Netherlands display relatively high small shareholder turnout rates compared to other continental European companies in 2014.

As expected, the ownership structures of Belgian and Austrian companies are relatively concentrated, whereas UK companies have more dispersed ownership structures. The ownership structures of Irish companies listed to the main index are also relatively concentrated. The results for the Herfindahl-Hirschman index (HHI) show that the Netherlands has the lowest ownership concentration of all continental European countries in our sample. In contrast, small shareholders in France have a relatively high voting power (BANZHAFsmall), compared to other continental European countries. Small shareholders in the Anglo-American countries in our sample, UK and Ireland, have the most voting power with respectively 0.74 and 0.83%. In Belgium, a small shareholder holding 1% of the votes, only has a voting power of less than one-third of his voting stake. Overall, these results are in line with the presumed *stylized fact* that ownership concentration is higher in continental Europe than in the UK. However, we would like to emphasise that there are also UK companies with more concentrated ownership structures, and companies that have registered offices in continental European countries with more dispersed ownership structures. The international character of the large, listed, often 'multinational' companies in our sample somewhat diminishes the differences between the UK and continental European countries.

Based on the findings in chapter 1, we determined several voting item categories and investigated the content of AGMs in practice. The 1,255 AGMs in our sample had, on average, almost 17 voting items on their agendas, with the highest averages in the UK and France (both over 19 items on average). In Austria, agendas were relatively short with (a little) less than 10 agenda items on average. Shareholders of UK companies may (re-)elect on average more than nine directors per meeting. In contrast, in Austria and Germany this is only 2.3 or 2.5 directors on average, respectively. Few voting items did not pass, and if a voting item was rejected, the rejection was often thoroughly discussed in the media. The remuneration report was rejected at 8 of the 641 meetings that included this agenda item. Resolutions regarding changes to share capital were slightly more often dismissed (33 times, including capital increases, limitations to pre-emption rights and share buy-backs). However, if we only consider the outsider shareholders, many more resolutions would have been dismissed. The highest shareholder opposition at an AGM was on average 17.8%. Director (re-)elections, say-on-pay resolutions, capital increases and proposals regarding the notice period for GMs frequently receive the greatest shareholder opposition.

We also evaluated the types of blockholders in each country. The largest shareholder in the UK was often an institutional investor, whereas in Austria, France and Belgium it was a corporate insider. In the Netherlands and Ireland there are relatively many companies with institutional investors as their largest shareholders. However, the average stakes of this type of largest shareholder are often small, with only 8.5% in UK companies and 13.6% in the Netherlands.

10.2. Discussion and Policy Implications

The results in this chapter show that some small shareholders (although certainly not all) do vote, and that there is an increasing trend in small shareholder voter turnout. Note that this outcome is not in line with the economic theory discussed in the introduction chapter that suggests that hardly any small shareholder will vote in practice. We further elaborate on this finding below, and afterwards we discuss the implications for outsider shareholders.

The Turnout Decision

Note that economic theory often departs from the common assumption that individuals, in our case shareholders, act as rational individuals. Rational shareholders weigh the costs and benefits of their behaviour and consider the expected behaviour of others. This assumption of rationality is generally necessary for a prediction of behaviour, because irrational behaviour does not fall into any pattern; only the relationship between actions that form some pattern can be analysed (rational choice theory, also see, for instance, Downs, 1957).[349] However, the rationality assumption may not always hold.

Rational choice theory attempts to explain why in many political elections people decide to vote regardless of whether an individual can affect the outcome of the vote. It considers turnout rates at political elections a 'major theoretical puzzle' (Aldrich, 1993, p. 246), also referred to as the Downs paradox. Also in case of shareholder voting, it may be possible that shareholders choose to vote regardless of whether they can affect the voting outcome or whether other shareholders

[349] However, preferences are exogenously determined. In economic analysis, the rationality assumption is imposed on the individual's means, not his or her ends. It refers 'solely to a man who moves toward his goals in a way which, to the best of his knowledge, uses the least possible input of scarce resources per unit of valued output' (Downs, 1957, p. 5).

can benefit from their monitoring efforts. At first sight, this may be considered irrational behaviour, but there can be several plausible explanations. First, small shareholders may act rationally in accordance with their perception of reality; these shareholders may have a higher subjective perception of being decisive,[350] and even a small increase in the probability of being pivotal may have an impact on the turnout decision (Larcinese, 2013). Moreover, economic scholars do perhaps not include all benefits of voting, but only focus on whether shareholders can be pivotal or not. For instance, as we have seen before, the AGM has more functions and shareholders may also value their forum rights (*cf. infra*, chapter 6 of this research). In addition, shareholders may derive other benefits from voting. For example, these shareholders may derive utility from being an active and responsible shareholder; these factors add a private dimension to the public good of shareholder voting. Or, as we have seen in the example in the introduction chapter of this research, they join the meeting perhaps for the snacks and gadgets.

To see why (small) shareholders decide to attend, and how (small) shareholder turnout can be enhanced, we examine the factors that may contribute to attendance rates in chapters 3 and 4. For this we consider Aldrich's theory on political elections. He addresses the problems of voting in political elections – which may correspond to the shareholder absenteeism problems in the corporate governance context – and argues that turnout is a 'low-cost low-benefit action' to many. This implies that small changes in costs and benefits affect the decision to vote of many: he argues that the decision to vote is made 'at the margin'. In chapter 3 we focus on the benefits of the turnout decision, and in chapter 4 on the costs. In chapter 6 we investigate the value of the forum function.

Outsider Shareholders

This chapter already provides important insights into the shareholder's turnout decision. Our findings suggest that shareholder voting, at the very least, is not completely irrelevant. Although only a small part of the voting items did not pass, we found that some resolution categories received higher dissent rates than others. These categories include director (re-)elections and say-on-pay resolutions. Moreover, when we consider outsider shareholders, we note even higher dissent rates, and resolutions are more often dismissed by this group. These results indicate that shareholders do not blindly follow the proposals of the corporate board. In addition, these results raise important questions, such as whether large insider shareholder should be excluded from voting in certain corporate decisions, or that, perhaps, companies should pay more attention to outsider shareholder opinions.

Since 2014, small shareholders (i.e., independent shareholders) may vote separately on the election of independent directors in companies that have a controlling shareholder in the UK (in accordance with the Listing Rules, LR 9.2.2AR jo 9.2.2ER). The threshold for control is set at 30% and includes acting in concert. If the resolution is not approved, the company may propose a further resolution to elect or re-elect the proposed independent director which cannot be voted on until 90 days since the meeting have elapsed. It must be voted on within 30 days from the end of this 90-day wait period (LR 9.2.2FR). This second resolution must be approved by the shareholders

[350] Research has shown that we are not very good at estimating risks and are generally optimistic when estimating our chances. Behavioural economists have been challenging the rationality assumptions in economics, including the Rational Expectations School (Buchholz, 2007). In addition to optimism, Tversky Kahneman developed three heuristic principles that people rely on when assessing probabilities and risks; i) representativeness; ii) availability, and; iii) adjustment and anchoring (Tversky and Kahneman, 1974).

of the company (LR 9.2.2FR). Since ownership is more concentrated in continental European countries, legislators may consider adopting such rules that focus on outsider shareholders in these countries as well to enhance the role of AGMs. We strongly recommend investigating the effects of these new listing rules on independent shareholder voting in future studies. One step further would be the appointment of independent directors solely by independent shareholders (Van der Elst, 2013), but this may probably result in disproportionate control on the art of minority shareholders in corporate boards in some situations. For example, Van der Elst and Lafarre (2017) found that Dutch outsider shareholders sometimes used discharge resolutions as a mean to express their dissatisfaction with the corporate decision-making regarding say-on-pay resolutions. In this line of reasoning, minority shareholders perhaps may use the independent director elections in the same manner. Hence, we do not argue against the appointment of independent directors solely by minority shareholders *per se*, since the general purpose of these directors is to enhance minority shareholder protection against insider opportunistic behaviour of insiders, though possible side effects should be carefully assessed.

Lastly, we emphasise that this research uses the best proxy available to evaluate small shareholder turnout, but it remains a proxy. It may be the case that we have a downward bias in our reported results, and one should address these with some caution.

APPENDIX CHAPTER 2

A.1. Sample

TABLE A.1:

Sample characteristics

Company	Country (incorporation)	Supersector	ICB	Main index	2nd index	Company	Country (incorporation)	Supersector	ICB	Main index	2nd index
3i	UK	Financial Services	8775	FTSE	n.a.	*K+S*	Germany	Chemicals	1353	DAX	n.a.
AB InBev	Belgium	Food & Beverage	3533	BEL	n.a.	*KBC Groep*	Belgium	Banks	8355	BEL	n.a.
Aberdeen Asset Management	UK	Equity/Non-Equity Investment Instruments	8985	FTSE	n.a.	*Kenmare Resources*	Ireland	Basic Resources	1775	ISEQ	n.a.
Accor	France	Travel & Leisure	5753	CAC	n.a.	*Kering (PPR)*	France	Retail	5373	CAC	n.a.
Ackermans & van Haaren	Belgium	Financial Services	8775	BEL	n.a.	*Kerry Group*	Ireland	Food & Beverage	3577	ISEQ	n.a.
Adidas	Germany	Personal & Household Goods	3765	DAX	n.a.	*Kingfisher*	UK	Retail	5375	FTSE	n.a.
Admiral Group	UK	Insurance	8534	FTSE	n.a.	*Kingspan Group*	Ireland	Construction & Materials	2353	ISEQ	n.a.
Aegon	Netherlands	Insurance	8575	AEX	n.a.	*KPN*	Netherlands	Telecommunications	6535	AEX	n.a.
Aer Lingus Group	Ireland	Travel & Leisure	5751	ISEQ	n.a.	*Lafarge*	France	Construction & Materials	2353	CAC	n.a.
Ageas – Fortis	Belgium	Insurance	8575	BEL	n.a.	*Lagardere*	France	Media	5557	CAC	n.a.
Aggreko	UK	Industrial Goods & Services	2791	FTSE	n.a.	*Land Securities Group*	UK	Real Estate	8671	FTSE	n.a.
Ahold (merger with Delhaize)	Netherlands	Retail	5337	AEX	n.a.	*Lanxess*	Germany	Chemicals	1353	DAX	n.a.
Air Liquide	France	Chemicals	1353	CAC	n.a.	*Legal & General Group*	UK	Insurance	8575	FTSE	n.a.
Airbus Group	France	Industrial Goods & Services	2713	CAC	n.a.	*Legrand*	France	Industrial Goods & Services	2733	CAC	n.a.
Akzo Nobel	Netherlands	Chemicals	1357	AEX	n.a.	*Linde*	Germany	Chemicals	1353	DAX	n.a.
Alcatel-lucent	France	Technology	9582	CAC	n.a.	*Lloyds Banking Group*	UK	Banks	8355	FTSE	n.a.
Allianz	Germany	Insurance	8532	DAX	n.a.	*London Stock Exchange Group*	UK	Financial Services	8777	FTSE	n.a.
Allied Irish Banks	Ireland	Banks	8355	ISEQ	n.a.	*Lonmin Plc*	UK	Basic Resources	1779	FTSE	n.a.
Alstom	France	Industrial Goods & Services	2757	CAC	n.a.	*L'Oreal*	France	Personal & Household Goods	3767	CAC	n.a.
Amec	UK	Oil & Gas	573	FTSE	n.a.	*LVMH*	France	Personal & Household Goods	3763	CAC	n.a.
Andritz	Austria	Industrial Goods & Services	2757	ATX	n.a.	*MAN*	Germany	Financial Services	8771	DAX	n.a.
Anglo American	UK	Basic Resources	1775	FTSE	n.a.	*Marks & Spencer Group*	UK	Retail	5373	FTSE	n.a.
Antofagasta	UK	Basic Resources	1775	FTSE	n.a.	*Meggitt*	UK	Industrial Goods & Services	2713	FTSE	n.a.
ARM Holdings	UK	Technology	9576	FTSE	n.a.	*Metro ST*	Germany	Retail	5337	DAX	n.a.
Aryzta	Ireland	Food & Beverage	3577	ISEQ	n.a.	*Morrison (Wm) Supermarkets*	UK	Retail	5337	FTSE	n.a.
Ashtead Group	UK	Industrial Goods & Services	2791	FTSE	n.a.	*Muenchener Rueckversicherungs*	Germany	Insurance	8538	DAX	n.a.
ASML	Netherlands	Technology	9576	AEX	n.a.	*National Grid*	UK	Utilities	7575	FTSE	n.a.
Associated British Foods	UK	Food & Beverage	3577	FTSE	n.a.	*Next*	UK	Retail	5371	FTSE	n.a.
AstraZeneca	UK	Health Care	4577	FTSE	n.a.	*Oesterr. Post*	Austria	Industrial Goods & Services	2771	ATX	n.a.
Aviva	UK	Insurance	8575	FTSE	n.a.	*Old mutual*	UK	Insurance	8575	FTSE	n.a.
AXA	France	Insurance	8532	CAC	n.a.	*OMV*	Austria	Oil & Gas	537	ATX	n.a.
Babcock international	UK	Industrial Goods & Services	2791	FTSE	n.a.	*Paddy Power*	Ireland	Travel & Leisure	5752	ISEQ	n.a.
BAE Systems	UK	Industrial Goods & Services	2717	FTSE	n.a.	*Pearson*	UK	Media	5557	FTSE	n.a.

BAM Groep, Koninklijke	Netherlands	Construction & Materials	2357	AEX	n.a.	*Permanent TSB Group (Irish life and permanent)*	Ireland	Insurance	8575	ISEQ	n.a.
Bank of Ireland	Ireland	Banks	8355	ISEQ	n.a.	*Pernod Ricard*	France	Food & Beverage	3535	CAC	n.a.
Barclays	UK	Banks	8355	FTSE	n.a.	*Persimmon*	UK	Personal & Household Goods	3728	FTSE	n.a.
Barrat Developments	UK	Personal & Household Goods	3728	FTSE	n.a.	*Petrofac*	UK	Oil & Gas	573	FTSE	n.a.
BASF	Germany	Chemicals	1353	DAX	n.a.	*Peugeot*	France	Automobiles & Parts	3353	CAC	n.a.
Bayer	Germany	Chemicals	1357	DAX	n.a.	*Philips*	Netherlands	Industrial Goods & Services	2727	AEX	n.a.
Befimmo	Belgium	Real Estate	8671	BEL	n.a.	*Prudential*	UK	Insurance	8575	FTSE	n.a.
Beiersdorf	Germany	Personal & Household Goods	3767	DAX	n.a.	*Publicis Groupe SA*	France	Media	5555	CAC	n.a.
Bekaert	Belgium	Industrial Goods & Services	2727	BEL	n.a.	*Raiffeisen Bank Int.*	Austria	Banks	8355	ATX	n.a.
Belgacom (Proximus)	Belgium	Telecommunications	6535	BEL	n.a.	*Randstad Holding*	Netherlands	Industrial Goods & Services	2793	AEX	n.a.
BG Group	UK	Oil & Gas	537	FTSE	n.a.	*Reed Elsevier NV (RELX)*	Netherlands	Media	5557	AEX	FTSE
BHP Billiton	UK	Basic Resources	1775	FTSE	n.a.	*Reed Elsevier Plc (RELX)*	UK	Media	5557	FTSE	AEX
BMW	Germany	Automobiles & Parts	3353	DAX	n.a.	*Renault*	France	Automobiles & Parts	3353	CAC	n.a.
BNP Paribas Act A	France	Banks	8355	CAC	n.a.	*Rexam*	UK	Industrial Goods & Services	2723	FTSE	n.a.
Boskalis	Netherlands	Construction & Materials	2357	AEX	n.a.	*RHI*	Austria	Industrial Goods & Services	2757	ATX	n.a.
Bouygues	France	Construction & Materials	2357	CAC	n.a.	*Rio Tinto*	UK	Basic Resources	1775	FTSE	n.a.
BP	UK	Oil & Gas	537	FTSE	n.a.	*Rolls-Royce Holdings*	UK	Industrial Goods & Services	2713	FTSE	n.a.
British American Tobacco	UK	Personal & Household Goods	3785	FTSE	n.a.	*Royal Bank of Scotland Group*	UK	Banks	8355	FTSE	n.a.
British Land Co	UK	Real Estate	8672	FTSE	n.a.	*Royal Dutch Shell A & B*	UK	Oil & Gas	537	FTSE	AEX
British Sky Broadcasting Group	UK	Media	5553	FTSE	n.a.	*Royal Imtech*	Netherlands	Industrial Goods & Services	2791	AEX	n.a.
BT Group	UK	Telecommunications	6535	FTSE	n.a.	*RSA Insurance Group*	UK	Insurance	8532	FTSE	n.a.
Bunzl	UK	Industrial Goods & Services	2791	FTSE	n.a.	*RWE*	Germany	Utilities	7575	DAX	n.a.
Burberry Group	UK	Personal & Household Goods	3763	FTSE	n.a.	*Ryanair*	Ireland	Travel & Leisure	5751	ISEQ	n.a.
Bwin.party Digital Entertainment	Austria	Travel & Leisure	5752	ATX	n.a.	*SABMiller*	UK	Food & Beverage	3533	FTSE	n.a.
C&C Group	Ireland	Food & Beverage	3535	ISEQ	n.a.	*Safran*	France	Industrial Goods & Services	2713	CAC	n.a.
CA Immobilien Anlagen	Austria	Real Estate	8633	ATX	n.a.	*Sage group*	UK	Technology	9537	FTSE	n.a.
CAIRN Energy	UK	Oil & Gas	533	FTSE	n.a.	*Sainsbury (J)*	UK	Retail	5337	FTSE	n.a.
Capita	UK	Industrial Goods & Services	2791	FTSE	n.a.	*Salzgitter AG*	Germany	Basic Resources	1757	DAX	n.a.
Carrefour	France	Retail	5337	CAC	n.a.	*Sanofi Aventis*	France	Health Care	4577	CAC	n.a.
Centrica	UK	Utilities	7573	FTSE	n.a.	*SAP*	Germany	Technology	9537	DAX	n.a.
Cobham	UK	Industrial Goods & Services	2713	FTSE	n.a.	*SBM Offshore*	Netherlands	Oil & Gas	573	AEX	n.a.
Cofinimmo	Belgium	Real Estate	8671	BEL	n.a.	*Schneider Electric*	France	Industrial Goods & Services	2733	CAC	n.a.
Colruyt	Belgium	Retail	5337	BEL	n.a.	*Schoeller-Bleckmann*	Austria	Oil & Gas	537	ATX	n.a.
Commerzbank	Germany	Banks	8355	DAX	n.a.	*Schroders*	UK	Financial Services	8771	FTSE	n.a.
Compass	UK	Travel & Leisure	5757	FTSE	n.a.	*Semperit AG Holding*	Austria	Industrial Goods & Services	2757	ATX	n.a.
Continental	Germany	Automobiles & Parts	3357	DAX	n.a.	*Serco Group*	UK	Industrial Goods & Services	2791	FTSE	n.a.
Conwert Immobilien Invest	Austria	Real Estate	8633	ATX	n.a.	*Severn Trent*	UK	Utilities	7577	FTSE	n.a.
Corio	Netherlands	Real Estate	8672	AEX	n.a.	*Shire*	UK	Health Care	4577	FTSE	n.a.
Credit Agricole	France	Banks	8355	CAC	n.a.	*Siemens*	Germany	Industrial Goods & Services	2733	DAX	n.a.
CRH	Ireland	Construction & Materials	2353	ISEQ	FTSE	*Smith & Nephew*	UK	Health Care	4535	FTSE	n.a.
Croda International	UK	Chemicals	1357	FTSE	n.a.	*Smiths Group*	UK	Industrial Goods & Services	2727	FTSE	n.a.
Daimler	Germany	Automobiles & Parts	3353	DAX	n.a.	*Smurfit Kappa Group*	Ireland	Industrial Goods & Services	2723	ISEQ	n.a.
Danone	France	Food & Beverage	3577	CAC	n.a.	*Societe Generale*	France	Banks	8355	CAC	n.a.
DCC	Ireland	Industrial Goods & Services	2797	ISEQ	n.a.	*Solvay*	Belgium	Chemicals	1357	BEL	CAC
Delhaize Groep (merger with Ahold)	Belgium	Retail	5337	BEL	n.a.	*Sport Direct International*	UK	Retail	5371	FTSE	n.a.
Delta Lloyd Groep	Netherlands	Insurance	8575	AEX	BEL	*SSE (Scottish and Southern Energy)*	UK	Utilities	7535	FTSE	n.a.
Deutsche Bank	Germany	Banks	8355	DAX	n.a.	*St Microelectronics*	France	Technology	9576	CAC	n.a.

Deutsche Boerse	Germany	Financial Services	8777	DAX	n.a.	*St. James's Place*	UK	Insurance	8575	FTSE	n.a.
Deutsche Lufthansa	Germany	Travel & Leisure	5751	DAX	n.a.	*Standard Chartered*	UK	Banks	8355	FTSE	n.a.
Deutsche Post	Germany	Industrial Goods & Services	2771	DAX	n.a.	*Standard Life*	UK	Insurance	8575	FTSE	n.a.
Deutsche Telekom	Germany	Telecommunications	6535	DAX	n.a.	*Strabag*	Austria	Construction & Materials	2357	ATX	n.a.
Diageo	UK	Food & Beverage	3535	FTSE	n.a.	*Tate & Lyle*	UK	Food & Beverage	3577	FTSE	n.a.
D'Ieteren	Belgium	Retail	5379	BEL	n.a.	*Taylor Wimpey*	UK	Personal & Household Goods	3728	FTSE	n.a.
Dragon Oil	Ireland	Oil & Gas	533	ISEQ	n.a.	*Technip*	France	Oil & Gas	573	CAC	n.a.
DSM	Netherlands	Chemicals	1357	AEX	n.a.	*Telekom Austria*	Austria	Telecommunications	6535	ATX	n.a.
E.ON	Germany	Utilities	7575	DAX	n.a.	*Telenet Group Hold*	Belgium	Media	5553	BEL	n.a.
Easyjet	UK	Travel & Leisure	5751	FTSE	n.a.	*Tesco*	UK	Retail	5337	FTSE	n.a.
EDF	France	Utilities	7535	CAC	n.a.	*ThyssenKrupp*	Germany	Industrial Goods & Services	2727	DAX	n.a.
Elia	Belgium	Utilities	7535	BEL	n.a.	*TNT*	Netherlands	Industrial Goods & Services	2771	AEX	n.a.
Erste Group Bank	Austria	Banks	8355	ATX	n.a.	*TomTom*	Netherlands	Technology	9578	AEX	n.a.
Essilor Intl	France	Health Care	4537	CAC	n.a.	*Total*	France	Oil & Gas	537	CAC	n.a.
Experian	UK	Industrial Goods & Services	2791	FTSE	n.a.	*Travis Perkins*	UK	Industrial Goods & Services	2797	FTSE	n.a.
FBD Holdings	Ireland	Insurance	8532	ISEQ	n.a.	*Tui Plc*	UK	Travel & Leisure	5759	FTSE	n.a.
Flughafen Wien AG	Austria	Travel & Leisure	5751	ATX	n.a.	*Tullow Oil*	UK	Oil & Gas	533	FTSE	n.a.
Fresenius Medical Care AG & CO KGaA	Germany	Health Care	4533	DAX	n.a.	*UCB*	Belgium	Health Care	4577	BEL	n.a.
Fresenius SE & CO KGaA	Germany	Health Care	4533	DAX	n.a.	*Umicore*	Belgium	Chemicals	1357	BEL	n.a.
Fresnillo	UK	Basic Resources	1779	FTSE	n.a.	*Unibail-Rodamco*	France	Real Estate	8672	CAC	AEX
Fugro	Netherlands	Oil & Gas	573	AEX	n.a.	*Unilever NV*	Netherlands	Food & Beverage	3577	AEX	FTSE
G4S	UK	Industrial Goods & Services	2791	FTSE	n.a.	*Unilever Plc*	UK	Food & Beverage	3577	FTSE	AEX
GBL	Belgium	Financial Services	8775	BEL	n.a.	*Uniqa Insurance Group AG*	Austria	Insurance	8575	ATX	n.a.
GDF Suez	France	Utilities	7575	CAC	n.a.	*United Utilities Group*	UK	Utilities	7577	FTSE	n.a.
Gemalto	Netherlands	Technology	9537	AEX	FTSE	*Valeo*	France	Automobiles & Parts	3355	CAC	n.a.
GKN	UK	Automobiles & Parts	3355	FTSE	n.a.	*Vallourec*	France	Industrial Goods & Services	2757	CAC	n.a.
Glanbia	Ireland	Food & Beverage	3577	ISEQ	n.a.	*Vedanta Resources*	UK	Basic Resources	1775	FTSE	n.a.
GlaxoSmithKline	UK	Health Care	4577	FTSE	n.a.	*Veolia Environ*	France	Utilities	7577	CAC	n.a.
Hammerson	UK	Real Estate	8672	FTSE	n.a.	*Verbund AG Kat. A*	Austria	Utilities	7537	ATX	n.a.
Hargreaves Lansdown	UK	Financial Services	8771	FTSE	n.a.	*Vienna Insurance Group*	Austria	Insurance	8532	ATX	n.a.
HeidelbergCement	Germany	Construction & Materials	2353	DAX	n.a.	*Vinci*	France	Construction & Materials	2357	CAC	n.a.
Heineken	Netherlands	Food & Beverage	3533	AEX	n.a.	*Vivendi*	France	Media	5553	CAC	n.a.
Henkel	Germany	Personal & Household Goods	3767	DAX	n.a.	*Vodafone Group*	UK	Telecommunications	6575	FTSE	n.a.
HSBC Hldgs	UK	Banks	8355	FTSE	n.a.	*Voestalpine*	Austria	Basic Resources	1757	ATX	n.a.
IMI	UK	Industrial Goods & Services	2757	FTSE	n.a.	*Volkswagen*	Germany	Automobiles & Parts	3353	DAX	n.a.
Immofinanz	Austria	Real Estate	8633	ATX	n.a.	*Weir Group*	UK	Industrial Goods & Services	2757	FTSE	n.a.
Imperial Tobacco Group	UK	Personal & Household Goods	3785	FTSE	n.a.	*Wereldhave*	Netherlands	Real Estate	8672	AEX	n.a.
Independent News & Media	Ireland	Media	5557	ISEQ	n.a.	*Whitbread*	UK	Travel & Leisure	5757	FTSE	n.a.
Infineon Technologies	Germany	Technology	9576	DAX	n.a.	*Wienerberger*	Austria	Construction & Materials	2353	ATX	n.a.
ING Group	Netherlands	Insurance	8575	AEX	n.a.	*William Hill*	UK	Travel & Leisure	5752	FTSE	n.a.
Intercell AG (currently Valvena)	Austria	Health Care	4573	ATX	n.a.	*Wolseley*	UK	Industrial Goods & Services	2797	FTSE	n.a.
Intercontinental Hotels Group	UK	Travel & Leisure	5753	FTSE	n.a.	*Wolters Kluwer*	Netherlands	Media	5557	AEX	n.a.
Intertek Group	UK	Industrial Goods & Services	2791	FTSE	n.a.	*WPP*	UK	Media	5555	FTSE	n.a.
Intu	UK	Real Estate	8672	FTSE	n.a.	*Xstrata (Glencore xstrata)*	UK	Basic Resources	1775	FTSE	n.a.
ITV	UK	Media	5553	FTSE	n.a.	*Zumtobel*	Austria	Construction & Materials	2353	ATX	n.a.
Johnson Matthey	UK	Chemicals	1357	FTSE	n.a.						

A.2. Voting Power Indices

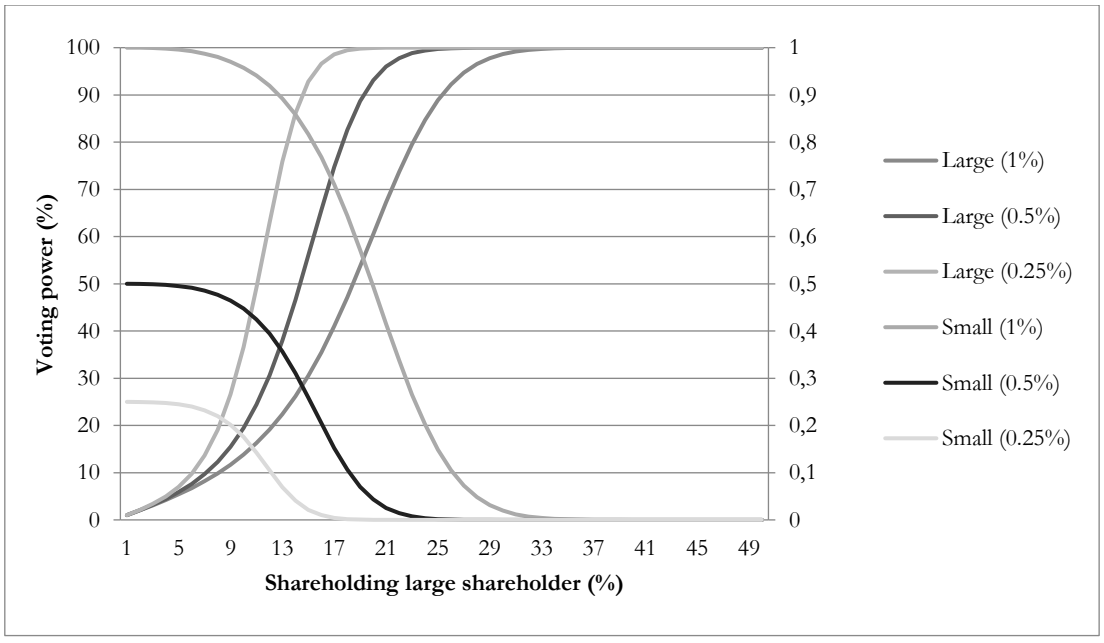
1. Shareholder Voting Power under Different Ownership Structures.

To gain more insight into the differences in shareholder voting power, this appendix analyses the Banzhaf index for different ownership structures. For example, in an ownership structure where there is only one large shareholder holding 20% of the voting rights and 80 other small symmetric shareholders that all hold a stake of 1%, the voting power of the large shareholder exceeds 60%; in case there are 160 small symmetric shareholders that all hold a stake of 0.5%, the voting power of the large shareholder even exceeds 90%. In contrast, if there is another large shareholder that holds 18% of the votes and all other small symmetric shareholders each hold 1%, the voting power of the large shareholder holding 20% of the votes only amounts to 15%. Similarly, in an ownership structure with 200 small shareholder each holding 0.5% of the votes, each small shareholder is equally powerful and has a voting power of 0.5%; in contrast, when there is a large shareholder holding 20% of the votes and 160 small symmetric shareholders, a small shareholder has only 0.04% of the voting power.

The following graph shows the voting power of one large and remaining small shareholders when symmetric small shareholders retain 1%, 0.5% and 0.25% of the votes respectively:[351]

FIGURE A.1:

Relationship between voting power of a large and small shareholder



It follows from graph A.1 that a large shareholder's voting power already exceeds 50% when he or she holds 15% of the voting rights and every other shareholder holds a stake of 0.5%. And when holding 25% of the total votes, the large shareholder holds approximately 100% of the voting

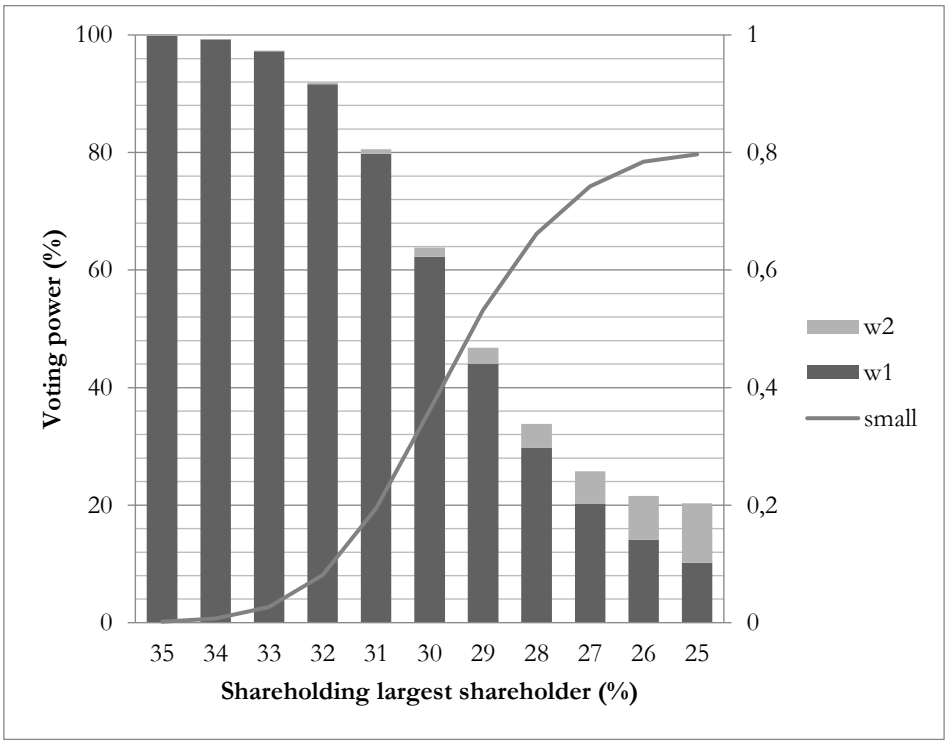
[351] On the y-axis, the voting power of the large and small shareholder is shown and on the x-axis the shareholding of the large shareholder is shown. The quota for the three games is respectively 50.5, 51, and 50.25% for the games with symmetric small shareholders holding 0.5, 1 and 0.25% of the votes, respectively.

power.[352] A large shareholder holding less than 20% of the voting rights may already exercise full control when small shareholders only retain stakes of 0.25%.

However, in a company with two large shareholders, the voting power of a small shareholder may be completely different. Figure A.2 below illustrates the relationship between the voting power of the largest shareholder, the second largest shareholder and a small symmetric shareholder holding 0.5% of the votes. The shareholdings of the first and second largest shareholder amount to 50% of the voting rights together (i.e., when the largest shareholder has a voting stake of 35%, the second largest shareholder has a voting stake of 15%). It is interesting to see that the Banzhaf index assigns a small shareholder a larger voting power when the two largest shareholders are more equal. Moreover, when these two shareholders both have a voting stake of 25% of the votes, the small symmetric shareholder holding 0.5% of the votes has 0.8% of the voting power.[353]

FIGURE A.2:

Voting power of two blockholders and a small shareholder (0.5%)



The previous analyses indicate that small shareholder voting power can be lower or higher than their actually voting stakes, depending on the ownership structure. Note that whereas we show the voting power of a symmetric small shareholder with at least 0.25% of the voting rights, small shareholder stakes, and thereby their voting power, can be *significantly* lower in practice.

[352] Rounded to integers. In this case, the small shareholder holds 0.0018% of the voting power, which is approximately zero.

[353] The quota in this game is 50.5%.

2. 'Amenability' method of Poulsen, Strand and Thomsen: Two examples

Consider again an ownership structure where one large shareholder holds 20% of the voting rights and 80 small symmetric shareholders that all hold a stake of 1%:

Ownership structure 1: {q: 1, 2, 3, …, 81}
= {51: 20, 1, 1, …, 1}.

In this situation, with a quota of 51% and including all shareholders, the voting power of the large shareholder is 60.5% according to the Banzhaf index. However, when we do not consider these small shareholders holding 1% of the votes, as Poulsen, Strand and Thomsen (2010) propose to be the first step in their analysis of amenability, the quota will be 11% and the large shareholder will have 100% of the voting power. The first 19 small shareholders that are added cannot affect the voting outcome; however, the twentieth small shareholder decreases the voting power of the large shareholder by 0.05%. In contrast, the eightieth shareholder, for example, decreases the voting power of the large shareholder by 2.7%.[354]

Now consider another ownership structure where there are three shareholders, holding 14, 10 and 6% of the voting rights respectively, and 70 shareholders holding each 1% of the votes:

Ownership structure 2: {q: 1, 2, 3, 4, 5, …, 73}
= {51: 14, 10, 6, 1, 1, …., 1}.

With a quota of 51% and including all shareholders, the voting power of the largest shareholder is 16.6%. The other shareholders have a voting power of 9.1 and 6.4% respectively. Without the small shareholders, with a quota of 16%, the voting power of each shareholder is one third. When adding another small shareholder, the division of voting power among the three largest shareholders remains the same. However, when a second small shareholder is added, the game changes: the voting power of the largest shareholder increases to 36%, which means that its voting power increases with 2.7% (a percentage increase of more than 8%). The voting power of the two small shareholders is now 4%, which is higher than their absolute voting stake and is also significantly higher than the voting power of the small shareholder in the game where there is only one small shareholder added.[355]

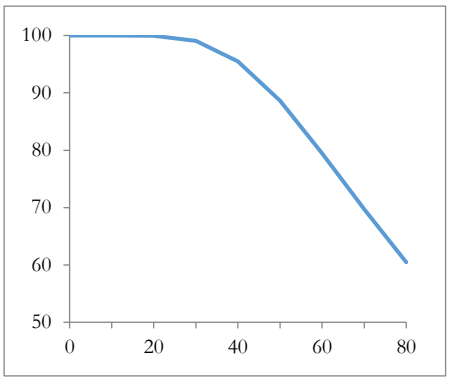
This example shows that both the voting power of the largest shareholder and of other shareholders in the game may influence small shareholder voting power. This is not shown by the measure of amenability that Poulsen, Strand and Thomsen (2010) use. Figure A.3 describes the effect on the voting power of the largest shareholder and small shareholders when adding one additional small shareholder successively in the two situations described above.

[354] The voting power decreases from 63.14 to 60.47%: this is a percentage decrease of more than 4.2%.
[355] In this particular game, the small shareholders and the largest shareholder are together able to form a blocking coalition, holding together 16% of the voting rights.

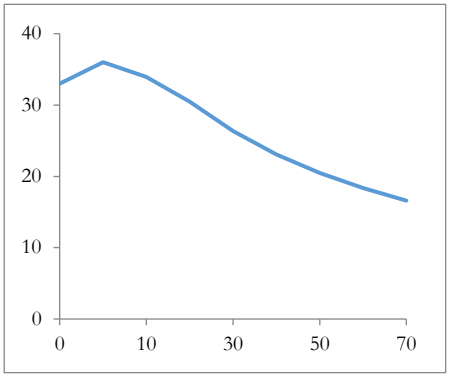
FIGURE A.3:

Change in the Voting Power of the Largest Shareholder and small shareholders (y-axis: voting power (%), x-axis: amount of small shareholders in the game)

Largest shareholder voting power:

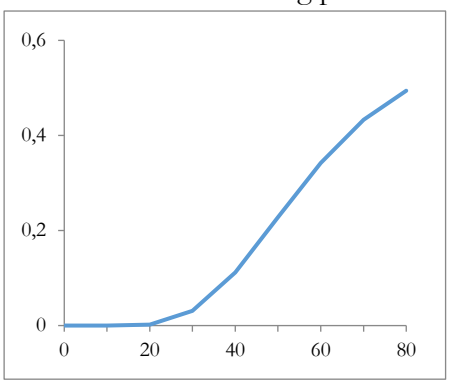


Ownership structure 1

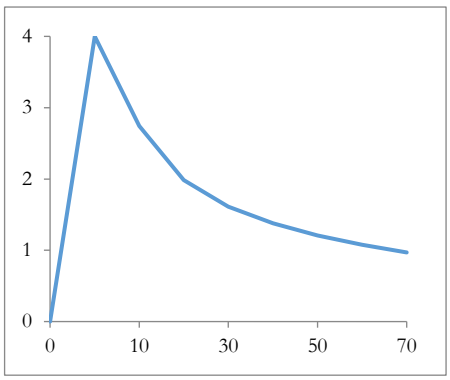


Ownership structure 2

Small shareholder voting power:



Ownership structure 1



Ownership structure 2

Moreover, the average percentage decrease when adding an additional shareholder holding 1% of the voting rights is 0.49% in the first ownership structure and 0.72% in the second ownership structure. In contrast, the Banzhaf voting power index assigns a voting power of only 0.49% to small shareholders holding a 1% stake in the first ownership structure, whereas in the second situation the voting power is 0.97%. It may be clear that in the situation with a large shareholder that has a stake of 20%, small shareholders would have significantly lower voting power than in the second ownership structure situation. It seems that the Banzhaf voting power index for small shareholders is more favourable as it better captures these differences than Poulsen, Strand and Thomsen's amenability measure of (2010).

A.3. Outsider Shareholder Opposition

TABLE A.2.

Outsider Shareholder Opposition per Country

Resolution Category	Austria	Belgium	France	Germany	Ireland	Netherlands	UK
i. Director (re-)elections	10.4 (72)	20.3 (74)	20.0 (167)	11.8 (94)	14.5 (90)	4.0 (105)	6.1 (503)
ii. Say on pay: overall	4.9 (79)	20.8 (61)	26.9 (143)	8.5 (80)	7.1 (75)	13.2 (72)	9.7 (504)
iii. Say on pay: remuneration report	16.0 (6)	23.3 (54)	40.5 (2)	n.a.	6.5 (74)	n.a.	9.1 (504)
iv. Say on pay: *other*	4.1 (74)	3.4 (21)	26.8 (143)	8.5 (80)	6.3 (12)	13.2 (72)	6.3 (108)
v. Capital increase	27.4 (35)	38.6 (12)	26.6 (132)	11.5 (77)	4.2 (64)	12.9 (99)	6.8 (505)
vi. Waiver of pre-emption rights	24.8 (36)	77.0 (4)	22.8 (122)	11.6 (87)	7.5 (64)	17.4 (97)	2.2 (440)
vii. Related-Party transactions[356]	n.a.	n.a.	11.7 (120)	1.2 (1)	n.a.	n.a.	1.7 (5)
viii. GM 14 days	n.a.	n.a.	n.a.	n.a.	5.8 (66)	n.a.	8.6 (452)
ix. Amendments to the articles	8.8 (47)	14.8 (8)	9.9 (69)	3.3 (70)	15.3 (25)	13.3 (33)	6.6 (355)

[356] Not related to directors.

CHAPTER 3 - 'THE MORE THE MERRIER': WHAT DRIVES (SMALL) SHAREHOLDER ATTENDANCE AT ANNUAL GENERAL MEETINGS?

ABSTRACT

This chapter investigates which factors contribute to (small) shareholder attendance using a hand-collected panel dataset with information about turnout rates, voting behaviour, and ownership structures of companies that are listed in seven Member States. We document how ownership concentration positively affects total shareholder turnout, but has a negative effect on small shareholder turnout. Voting power also affects small shareholder turnout rates; the greater small shareholder voting power, the greater their eagerness to vote. In addition, total and small shareholder turnout is higher the more important the meeting agenda. And, small shareholders tend to free-ride on large institutional shareholders and corporate insiders, but the magnitude of the free-rider effect is larger for the latter category of blockholders. Our results provide some important insights for the debate on shareholder rights and the role of the AGM in corporate governance. The results show that, despite the criticism, the AGM still plays an important role in small shareholder monitoring. Some topics seem to clearly motivate small shareholders to attend, while others are less relevant. Policy makers can stimulate shareholder monitoring by focusing on the factors that are determined in this study, but it is important to take into account possible endogeneity issues as well.

1. INTRODUCTION

There are different ways to investigate the role of AGMs in an empirical analysis. For instance, one may evaluate the (voting) behaviour of shareholders in AGMs and ask the question, what drives shareholder dissent? This question has been studied by many scholars (e.g., Renneboog and Szilagyi, 2013; Belcredi, Bozzi and Di Noia, 2013; Conyon and Sadler, 2010; De Jong, Mertens and Roosenboom, 2006). One may also choose to evaluate shareholder turnout rates[357] – i.e., which factors contribute to shareholder voter turnout? Surprisingly, not many scholars have paid attention to the latter question, though turnout rates, rather than voting behaviour, contributes to all three theoretical functions of the AGM (*cf. supra*, introduction and chapter 1). Van der Elst (2011) is one of the few that focused his research on shareholder attendance rates. In this chapter, our research builds on his framework and evaluates the reasons why shareholders decide to attend AGMs. We focus on small shareholders in particular as this group presumably has few incentives to vote (*cf. supra*, introduction and chapter 1).

1.1. Outline of this Chapter

This chapter begins by considering related research on shareholder voting behaviour. Since turnout is not widely discussed in the field of corporate governance, but is in the political economy literature base, we discuss some basic theory from this field in section 3 and relate it to (small) shareholder turnout. Then, in section 4 we formulate five hypotheses on factors that might contribute to (small) shareholder participation in AGMs in Europe. In the fifth section we explain our sample selection method and in section 6 we provide information on the variables that we use for our regression

[357] In this study, we use the terms 'to participate' and 'to attend' (or 'shareholder attendance' and 'shareholder participation') as synonyms; both terms include the situations that shareholders either physically attend the again, or vote by proxy or by mail.

analyses in section 7. Section 7 also includes a discussion of possible robustness concerns. Section 8 provides conclusions, policy implications and recommendations.

2. RELATED LITERATURE ON SHAREHOLDER VOTING

Surprisingly few scholars so far have made use of (open) data to study the factors that determine voter turnout rates in AGMs. In this section we look into studies that consider shareholder behaviour at (European) AGMs. We distinguish three categories of these studies: i) studies that (only) study shareholder proposals, ii) studies that study a specific voting item category (in a specific country), and iii) (comparative) studies that consider shareholder voting behaviour on management and shareholder proposals in general.

2.1. Shareholder Proposals

As we have seen in our legal analysis, article 6 of the Shareholder Rights Directive provides shareholders that (together) cross a particular threshold of share capital (no higher than 5%) with the right to put items on the agenda of the general meeting (accompanied by a justification or a draft resolution) or to table draft resolutions (article 6). In the US, shareholder proposals usually require a lower share capital threshold, but are subject to many rules and are often precatory or very costly to initiate. However, although these rules in the US are quite strict, shareholder proposals are more common in the US. As a result, shareholder proposals are often studied in the US.[358] Our descriptive analysis in chapter 2 shows that in Europe, of the over 23,000 agenda items, only 106 were shareholder proposals; in the Netherlands and Belgium no shareholder proposals were submitted to the AGMs.[359] Cziraki, Renneboog and Szilagyi (2010) also study shareholder proposals in Europe. The authors use a sample of 290 shareholder proposals submitted in nine Member States between 1998 and 2008. They retrieved their data from Manifest and their sample includes 40 UK companies and 23 companies in Austria, France, Germany, the Netherlands, Norway, Portugal, Russia and Switzerland.[360] They find that shareholder proposals are especially infrequent in continental European countries. In line with the findings of Buchanan et al. (2012), who compare shareholder proposals in the US and UK, the authors also find that in the UK shareholder proposals often relate to board composition, whereas in continental European countries it is specific corporate governance issues that are addressed more often. Although proposals usually face large shareholder opposition,[361] the authors conclude that it can be a valuable monitoring device as underperforming companies with low leverage are usually targeted by proxy proposals. The authors also find that the probability of a shareholder proposal being put on the

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358 A small selection of these studies: Ertimur, Ferri and Stubben (2010); Gillan and Starks (2000, 2007); Cotter and Thomas (2007); Karpoff (2001); Thomas and Martin (1998). On may also refer to Harris and Raviv (2010): these authors evaluate whether shareholders should have more control of corporate decisions.

359 However, one needs to take into account that we only studied AGMs.

360 The authors explain that Manifest contains a total of (only) 720 shareholder proposals in Europe, but that the voting outcomes were only reported for 290 proposals. Of the 720 shareholder proposals, 362 were submitted in the UK (period 1998-2008) and 358 in continental Europe (period 2005-2008). In contrast, in the US 2,792 proposals were submitted in the period 1996-2005. The average number of shareholder proposals that are submitted per year is 32.9, 89.5 and 279.2 the UK, continental Europe and the US, respectively. Cziraki, Renneboog and Szilagyi (2010), pp. 749-750 (table 2).

361 The authors find that proposals in the UK were most successful with 30.3% of the votes in favour on average; in continental Europe, the average percentages of votes in favour was 21.1%.

agenda increases with ownership concentration and the stake of institutional investors. The authors also investigate the effect of shareholder proposals on stock prices and find a 'significant negative abnormal return of -1.23%', which indicates that – according to the authors – 'the market interprets proposals and their failure to pass the shareholder vote as a negative signal of governance concerns' but that 'the market responds better to proposals submitted against large firms with low leverage' (p. 741).

2.2. Voting Items

Next we discuss the studies that focus on a particular voting item category. Belcredi, Bozzi and Di Noia (2013) studied minority shareholder behaviour regarding board elections in Italy between 2008 and 2010, using a manually collected dataset from AGM minutes and other data sources. The corporate election system in Italy allows minority shareholders to submit alternative slates of candidates. The authors find, *inter alia,* that minority activism in corporate elections is positively associated with the number of 'relevant'[362] shareholders (excluding controlling blockholders) but negatively with the stake of the ultimate shareholder, the presence of a shareholder agreement and the free float.[363] Minority shareholders decided to submit a slate of candidates in board elections more often in state-owned firms, and less often in family firms, but the authors concluded that ownership concentration is more relevant than the type of ultimate shareholder. Cai, Garner and Walkling (2009) also studied (uncontested[364]) director elections. The authors used a sample of 13,384 director elections at 2,488 US general meetings and investigated the relationship between performance (both at the company and director level) and the votes that directors received.[365] Cai, Garner and Walkling (2009) found that directors generally received many votes in favour. Moreover, the authors pointed out that if a director was slated, he or she was elected. The authors found mixed results for their hypotheses and concluded that, although lower numbers of votes led to reductions in 'abnormal' CEO compensation, the number of votes had little impact on the outcome of elections, director reputation or firm performance.

Executive remuneration and say-on-pay resolutions have also been widely studied. For instance, Conyon and Sadler (2010) examined the relationship between shareholder dissent and executive remuneration and showed that higher executive remuneration leads to more dissent. Correa and Lel (2013) investigated the effects of shareholders' say on pay on CEO compensation, the fraction of the top management's pay that is captured by CEOs, and firm valuation, using a sample of 103,000 firm-year observations from 39 countries (from the S&P's Capital IQ database,

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362 The authors defined a relevant shareholder as any shareholder holding more than 2% of the share capital in a listed firm.

363 Free float is defined as the share capital (in percentage) that is held neither by the ultimate owner, nor by other relevant shareholders.

364 Where the number of director candidates is the same as the number of positions.

365 One may note that director elections in the US are generally organised differently than in Europe. First of all, there is a possibility of cumulative voting. Next, Cai, Garner and Walkling explain that under 'plurality elections' (section 216(1) DGCL) all directors shall be elected with a plurality of the votes. This means that, if for example three directors are to be elected and only three are running, directors could be elected with a single vote. Under plurality vote rules, shareholder can vote in favour of a director, withhold their vote(s), or decide not to vote; shareholders cannot vote against (see also Cai, Garner and Walkling, 2007). In 2006 the sentence 'A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors' was added to section 216 DGCL.

CIQ). The authors found, *inter alia,* that the say-on-pay right corresponded with a lower level of CEO compensation and a lower portion of pay received by CEOs. In addition, companies most affected by say-on-pay legislation were the ones with poor performance. Ferri and Maber (2013) studied say on pay in the UK (FTSE-350 data from Manifest, BoardEx and other databases) and found positive stock price reaction at firms, in particular for firms that have high pay without performance. The authors also found that significant dissent rates on say-on-pay proposals affected executive compensation. Van der Elst and Lafarre (2017) studied say-on-pay proposals in the Netherlands. the Netherlands was the first country to introduce a mandatory shareholders' vote on the remuneration policy in 2004. The authors show that in the Netherlands say-on-pay proposals are seldom dismissed, but that 'outsider shareholder opposition' is substantially higher than total shareholder opposition (*cf. supra*, section 9 of chapter 2). Thomas and Van der Elst (2015) conducted a comparative legal study on say on pay (including the US, UK, Australia, Belgium, France, Germany, Sweden, and the Netherlands) and provided some empirical evidence as well. The authors found that say-on-pay regulations and their effects varied across nations, but noted that there were some general trends. The authors concluded that say on pay was likely to stay in corporate governance. Finally, Barontini et al. (2013) studied the impact of reforms on directors' remuneration in the aftermath of the financial crisis. The authors also provided an overview of European say-on-pay regulation (table 1 in their study).

2.3. General Studies

We also consider more general (comparative) studies that study shareholder voting behaviour. First, De Jong, Mertens and Roosenboom (2006) studied both voter turnout and shareholder behaviour for 54 different Dutch companies at 245 Dutch AGMs in the period 1998-2002. They found that the shareholder turnout of Dutch AGMs, for the companies without depository receipts, was relatively low at around 30%. The authors concluded that, although the percentages of votes against were typically very small, and moreover, proposals were rarely rejected, the proposals regarding increases in capital and exclusions of pre-emption rights usually received the greatest opposition. The authors also noted that they found no relationship between ownership concentration and shareholder opposition; the same held for financial performance. The overall conclusion of De Jong, Mertens and Roosenboom (2006) was that 'shareholders in the Netherlands have hardly any influence on management'.[366]

Renneboog and Szilagyi (2013) conducted a large study that examines 42,170 management proposals and 329 shareholder proposals submitted to general meetings in 17 European countries between 2005 and June 2010, to assess, *inter alia*, what drives the level of shareholders dissent over management proposals.[367] They found little dissent over management proposals, with an average of 96.3% and median 99.3% for all proposals in all 17 countries. The multivariate analyses[368]

[366] According to the authors, their research provides strong indications that non-Anglo-Saxon countries such as the Netherlands differ from Anglo-Saxon countries in that shareholder are much more active in the Netherlands, and regulatory initiatives that enhance corporate governance mechanisms should take this into account.

[367] Besides this question, the authors also examined why firms were targeted by shareholder proposals and what drove the level of voting support attracted by shareholder proposals.

[368] The dependent variable in their models is the percentage of the votes in favour, a variable between zero and one. The authors use the logistical transformation ln[votes for/(100-votes for)]. The authors also included 'extensive controls' in their models, 'for meeting, proposal, firm and country characteristics' (p.

showed that corporate management recommendations were the biggest drivers in the success of a proposal, but, when there was also a shareholder proposal on the agenda or 'management is defeated before',[369] dissent increases. The authors found no relationship between firm performance and voting dissent. Interestingly, Renneboog and Szilagyi showed that management proposals were generally supported by corporate insiders, affiliate firms, governments and 'pressure-sensitive' institutional investors, but less successful in large firms with widely held and diverse ownership structures, as well as in firms held by 'pressure-insensitive' institutional investors.[370] Accordingly, they concluded that these pressure-insensitive institutional investors, such as investment funds 'are prepared to use their vote to publicly challenge management'. The authors also concluded that minority shareholders would become more critical at meetings. In addition to these findings, the authors also estimated the effect of country-level regulations that may restrict shareholder turnout, such as share blocking and record date restrictions and found that these restrictions lowered shareholder dissent over management proposals. In contrast, proxy voting reduced shareholder dissent, but the authors presumed this was due to the ultimate owners of the shares not giving specific voting instructions.[371] These country-level differences have been substantially reduced with the introduction of Directive 2007/36/EC, however (for an extensive analysis, one may refer to chapter 4 of this research).

Poulsen, Strand and Thomsen (2010) studied the impact of voting power on shareholder activism at Swedish AGMs. The authors investigated whether there was a positive relationship between shareholder activism and a measure of the largest shareholder's sensitivity to increased participation by small shareholders. The authors found, *inter alia,* that the 'amenability' to small shareholder voting power led to more proposals by the nomination committee, but fewer proposals by other shareholders and lower dissent rates (*cf. supra*, we discussed this amenability method in the appendix to chapter 2).

3. TURNOUT IN POLITICAL ELECTIONS

Whereas the turnout decision is not commonly studied in corporate governance, it is widely discussed in a political context. Downs (1957) was one of the first to address the political election puzzle in rational choice theory, asking the question *why do citizens vote in political elections when the marginal effect of their vote is insignificant?* In his work, Downs uses the parameter *D* to describe the value of seeing democracy continue (also see Aldrich, 1993); if no one would vote, democracy

339). These controls included country-level differences in shareholder rights that may be relevant for participation at shareholder meetings, such as whether shareholders need to have their shares deposited in order to attend the meeting (share blocking). Besides, the authors also included the anti-self-dealing index (Djankov et al., 2008) and an index composed of several World Bank Worldwide Governance Indicators, in order to capture governance quality at the country level.

369 The variable 'management defeated before' is a dummy variable that is equal to one if a management proposal has previously failed or a management-contested shareholder proposal has previously passed, and zero otherwise. (Appendix, p. 358 and further).

370 Renneboog and Szilagyi (2013), p. 348. Pressure-sensitive institutional investors include banks and insurance companies and pressure-insensitive institutional investors are pension and labour union funds, investment funds and their managements and independent investment advisors (Appendix, the data are retrieved from CapitalIQ).

371 The authors include a dummy variable that is equal to 1 if shareholders may be fully permitted to vote by proxy.

would fail. In his work, Aldrich (1993) shows the formula that is also used by Riker and Ordeshook (1968), building on the theory of Downs (1957);

$$R = PB + D - C,$$

where *R* denotes the revenue, *P* the probability that one vote will make a difference, *B* the benefits that the preferred candidate wins, *D* the value that an individual receives from voting regardless of the outcome (i.e., similar to Downs' value of seeing democracy continue) and *C* the voting costs. Aldrich adds that *P* is larger the closer the election is, but also varies from person to person. This *P* term is the problematic term in rational choice theory, as it should be very small, approximately zero, in a large electorate. This indicates that either B must be very large, or *D* needs to be close or equal to *C*.[372]

Aldrich addresses this problem and argues that turnout is a 'low-cost low-benefit action' (p. 261) for many. This explanation implies that small changes in costs and benefits affect the decision to vote for many: for him, the decision to vote is made 'at the margin' (p. 261). He writes that voting costs are generally low: in the US, for example, ballots typically contain more contests, which may result in 'economies of scale' for voting. The same argument can be made in the case of shareholder voting. Other arguments that Aldrich presents are that the costs of voting are generally low since voting 'does not take *that* long' and 'polling places are not *that* far away' (p. 261), and voting decisions are (partly) based on accidental information reducing voting costs (following Downs, 1957). Van der Elst (2011) offers a similar line of reasoning in the corporate law setting: shareholders only must approve or reject – or withhold their votes regarding – voting items that are prepared company directors, and hence, voting costs may be low.

Like costs, per Aldrich, benefits are also low. Accordingly, modestly changing either the costs or the benefits of voting may have a significant impact on turnout rates. Aldrich's approach explains four characteristics of political turnout rates, which may be relevant for our assessment of shareholder voting: i) many variables are related to turnout, but often moderately or weakly; ii) the question of who votes is difficult to answer (also see our earlier discussion of the incomplete information problem, *cf. supra*, chapter 2, section 5 and 6); iii) individual decisions to vote are not always optimal since it is not worth the effort to examine whether *R* would indeed be positive, and; iv) models suffer from measurement errors, 'attenuating estimates' (pp. 264-265).

The analogue of this theory to (small) shareholder turnout is very relevant to our research. The small shareholder base of public companies is certainly not homogenous and consists of, for example, institutional shareholders, but also a large variety of private shareholders. When we incorporate Aldrich's equation, $R = PB + D - C$, it may be the case that small private shareholders define the term *D* differently than institutional investors. Factors influencing *D* may also differ

[372] Ferejohn and Fiorina (1974, 1975), as also described by Aldrich, use a slightly different approach: the 'minimax regret model'. This model can be explained as follows: assume that you did not vote and it turns out that your preferred candidate could not win by exactly one vote. Then, would you have any regret, and if so, how much? In case you abstained from voting, the expected outcome is a tie, which yields a payoff of 1/2. However, had you exercised your voting right, you would have gained (1 – C). Hence, the amount of regret in this situation would be (1 – C) – 1/2 = 1/2 – C. For each action, i.e., vote for the preferred candidate or abstain from voting, the maximum amount of regret is calculated for the five aforementioned situations. The minimax regret strategy then suggests that one chooses the action that yields the lowest of these maximum regrets.

among private shareholders. For example, the *D* term for the private investor that is quoted by Bremmer (2016, *cf. supra*, introduction chapter) would perhaps include the ambiance of the AGM, the food and drinks and the opportunity to have a nice day out. And, his opportunity costs may be relatively low compared to other (private) shareholders: in this case, the *C* term will be relatively low and the benefits incorporated in *D* are relatively large.

The introduction of the Shareholder Rights Directive (Directive 2007/36/EC) has arguably substantially decreased voting costs. In the next chapter we examine whether we can put a causal claim on the relationship between the implementation of the Shareholder Rights Directive, and thus the fall of voting costs, and the increase in turnout rates. However, before we do this in chapter 4, in the next sections of this chapter we first focus on *the benefits side* of the turnout decision (i.e., *PB* in Aldrich's model). More specifically, we investigate which factors drive (small) shareholder attendance.

4. HYPOTHESES

Economic theory explains that if large shareholders are present, small shareholders may have more incentives to free-ride on the monitoring efforts of these large shareholders. We therefore expect to find the following relationship between ownership structure and voter turnout (following Van der Elst, 2011, hypothesis 2b):

Hypothesis 1: (small) shareholders are less likely to attend the AGM if the ownership structure is more concentrated.

The willingness of small shareholders to attend the AGM is likely to decrease when these small shareholders have less opportunity to influence decision-making. Their voting power, measured by indices such as the Banzhaf index or Shapley-Shubik value (*cf. infra,* chapter 2, section 6), is not only determined by their own voting stake, but also by the complete ownership structure of a company. We test whether small shareholders indeed consider their voting power (or, in Aldrich's terms, whether small turnout rates are higher when *P* is larger):

Hypothesis 2: the decision of small shareholders to vote is positively related to their voting power.

The 'importance of the meeting' may also influence voter turnout (Van der Elst, 2011, p. 10). Both blockholders and small shareholders may have stronger incentives to attend the AGM if they care more about the items on the agenda. High dissent rates may indicate the importance of agenda items. Van der Elst concludes that director elections have a significant effect on voter turnout rates. Per Van der Schee (2011), the appointment and dismissal of board members are the most important shareholder powers. Since 'the board "controls" the strategy and policies of the firm, "control" over the board is crucial' (Van der Schee, 2011, p. 139). Cools (2011) also explains that '[t]he most important voting right of shareholders is probably the right to elect and dismiss directors' (Cools, 2011, p. 200). The number of director elections may thus have a positive effect on shareholder attendance. Conyon and Sadler (2010) demonstrate that shareholders are more likely to vote against resolutions related to directors' pay compared to other types of non-pay related resolutions. Moreover, they find that high executive pay packages obtain more votes against.

In addition, resolutions linked to the company's share capital may also affect the interests of incumbent shareholders. For example, the authorisation to issue shares in combination with a restriction on shareholders' pre-emptive rights can cause a dilution of the stake of existing shareholders. The agenda items with the highest opposition on average are reported in table 2 (*cf. infra*, section 5.2 of this chapter).

Article 6 the Shareholder Rights Directive allows shareholders that hold (a combined) stake of at least 5% to add a proposal to the agenda of the AGM. In cases where an item proposed by a shareholder is placed on the agenda, shareholders may have more incentive to attend the AGM as the passing (or the dismissal) of such a resolution might be of great importance to them. At the very least, these shareholder proposals indicate a form of shareholder activism.

To summarize, we expect that:

Hypothesis 3: the importance of the meeting will positively affect (small) shareholder voter turnout of at the AGM.

The type of blockholder can influence small shareholder turnout, too. Corporate insiders such as families have large incentives to invest in monitoring and small shareholders may choose to free-ride on these efforts. But, the presence of corporate insiders can also be harmful to small shareholders, especially when these shareholders are likely to maximize private benefits. For example, Maury and Pajuste (2005) find that families extract more private benefits, and that firm value increases when these are monitored by other types of large shareholders. Thus, the presence of families or other large corporate insiders that are likely to behave opportunistically may increase the incentives for small shareholders to engage in relatively costly monitoring. However, since these corporate insiders usually have large stakes in order to be able to exercise (*de facto*) control, small shareholders may not be willing to incur the cost of monitoring (especially when their voting power is low), and may instead choose to exit the company. These considerations are summarized in the following hypotheses:

Hypothesis 4a: Corporate insiders have a positive impact on small shareholder turnout.

Hypothesis 4b: Corporate insiders have a negative impact on small shareholder turnout, especially when their ownership stake is larger.

Expectations about the effect of institutional investors on small shareholder voting are inconclusive. In most countries, institutional investors have certain responsibilities to monitor management and act as active shareholders. Institutional investors will generally 'join' shareholder meetings (usually by proxy and with the help of proxy advisors, see Schouten, 2012), in particular in the UK, where institutional investors have to exercise their voting rights. Their participation may thus increase total and small shareholder turnout. Their presence, however, may actually *reduce* the incentive of other shareholders to monitor, i.e. to vote at the AGM, as i) they are able to free-ride on the monitoring effort of these institutional investors, and ii) AGMs become less important as a result of potential side-stepping behaviour. These considerations are summarized in the following hypotheses:

Hypothesis 5a: Institutional investors have a positive impact on (small) shareholder turnout.

Hypothesis 5b: Institutional investors have a negative impact on (small) shareholder turnout.

Table 1 summarizes our expectations:

TABLE 1

Expectations

Factor	**Expected effect on TURNOUT**	**Expected effect on TURNOUTsmall**
Ownership concentration	+	-
Voting power (small shareholder)	?	+
Voting power (large shareholder)	n.a.	-
Importance of the meeting	+	+
Corporate insiders	n.a.	?
Institutional investors	n.a.	?

For our analyses in the remaining sections of this chapter, we use the same sample of 1,255 observations (251 companies) as in chapter 2 (*cf. supra*, table 1 and appendix A.1 of chapter 2).

5. VARIABLES

The dependent variables in this study are total shareholder turnout and small shareholder turnout measures (*cf. supra,* chapter 2, sections 3-4). Explanatory variables include measures of ownership structure, voting power, and meeting importance (*cf. supra,* chapter 2, sections 5-8). These variables are described in the next section.

5.1. DEPENDENT VARIABLES

As we have seen in the previous chapter, the calculation of total shareholder turnout is rather straightforward:

TURNOUT
= (Total number of votes cast)/(Total amount of votes outstanding) * 100%,

where the total amount of votes outstanding is corrected for treasury shares. Retrieving small shareholder turnout rates is more difficult. Due to the incomplete information problem regarding AGM attendance, we have developed a proxy to estimate small shareholder turnout rates (*cf. supra*, chapter 2, section 4). We use the following formula in this analysis:

TURNOUTsmall

= (Amount of small shareholders present)/(Total amount small shareholders) *100%

= (TURNOUT – Summed voting block of all blockholders)/(100% – Summed voting block of all blockholders) *100%

This formula defines small shareholders as all shareholders with less than 5% of the voting rights (i.e., all shareholders not being blockholders).

5.2. INDEPENDENT VARIABLES

The independent variables considered in this framework have been defined in the previous chapter. These variables include ownership and voting power measures, 'importance of the meeting' measures, types of shareholder measures and control variables. As we have seen in chapter 1, AGM agendas substantially differ among Member States. To use them correctly in the regression analysis, we developed a framework of different voting item categories in chapter 1 of this research. The voting items that may contribute to the importance of the meeting, as found in chapter 2 of this research, are described in table 2:

TABLE 2

Overview of Voting Item Categories

Resolution Category	**Mean opposition (%)**[373]
Director (re-)elections	6.6
Remuneration report	7.5
Say on Pay (*other*)	8.0
Capital increase	8.3
Waiver of pre-emption rights	6.2
Amendment to articles	4.2
Discharge	1.6
RPT	6.6
GM 14 days	7.5

These items are only included in the analysis when shareholder opposition is the highest among all resolutions during an AGM (in the 'opposition' variables, *cf. infra*, table 3). We also use measures that describe the number of directors that are up for (re-)election, the number of voting items on the agenda, the number of proposals dismissed per meeting and the number of shareholder proposals (see table 3, below for a detailed description per variable).

We also include control variables in our analyses that provide financial information and firm characteristics. We use two financial indicators from DataStream, the Total Return Index and the Price Index. The log of the market value for the fourth quarter of the year before the AGM took

[373] Discharging directors and amending the articles of association are also considered important (the standard deviation of dissent for these resolutions is relatively large, *cf. supra*, table 13 in chapter 2).

place is used as a size measure (data is also retrieved from Datastream). The index a company belongs to and the ICB supersector are both considered.[374]

An overview of variables is provided in table 3 below. In the appendix of this chapter descriptive characteristics of these variables are displayed (table A.1).

TABLE 3

Overview of Variables

Variable name	**Description**
	Dependent variables
TURNOUT	Calculated as the total voter turnout divided by the total number of votes (treasury shares not considered).
TURNOUTsmall	Calculated as the total relative voter turnout minus the summed voting block of all blockholders divided by 100% minus the summed voting block of all blockholders. We consider all reported stakes over 5%.
	Concentration and voting power measures
C1	This is the concentration ratio for the largest shareholder.
BLOCK	This is the concentration ratio for all shareholders with a stake of 5% (blockholders), calculated as: $Cr_x = \sum_{i=1}^{x} s_i$, where $s_i \geq 5\%$.
HHI	Calculated as: $H = \sum_{i=1}^{N} s_i^2$, considering the stakes of all blockholders and where the unknown stake of the small shareholders is ε, which is approximately zero.
R12	This is the ratio of stake of the second largest shareholder divided by the stake of the largest shareholder (*cf. supra*, section 5.1.1 of chapter 2).
BANZHAFsmall	The Banzhaf index for a small shareholder holding 1% of the votes, calculated with the program *Ipmmle* of Leech. The quorum is set at 51%and all stakes rounded to the nearest integer.
BANZHAFlarge	The Banzhaf index for the largest shareholder.
SHAPLEYsmall	The Shapley-Shubik index for a small shareholder holding 1% of the votes, calculated using Leech's *Ssmmle* program.
	'Importance of the Meeting'
Items	The number of voting items that shareholders can vote on.
Elections	The number of (supervisory) board members elected or re-elected by the AGM.
Opposition	Highest percentage of no-votes at the AGM. Shareholder proposals and countermotions are excluded. Abstentions are excluded.
Rejections	The number of voting items rejected at the AGM. Two variations: shareholder proposals and countermotions are excluded.

[374] Previous research also considered the impact of social media (Powell and Rapp, 2015; Van der Elst, 2011; Nordén and Strand, 2011), but there is a general consensus that external attention is likely to be related to the size and prominence of companies (Powell & Rapp, 2015; Van der Elst, 2011). The sector in which companies operate can also probably have an effect on media attention. Our sector index and market value measures already control for this.

dX	These dummy variables have a value of 1if shareholders could vote on the voting items that are reported in table 2 of this chapter (hence, 'X' denotes the agenda items as described as described in table 2)
Shareholders	The number of shareholder proposals that are on the agenda, including counter motions.
Type of shareholder	
dInsider, dInstitutional, dNonfinancial, dGovernment	Dummy variables for the type of largest ultimate shareholder. These dummy variables take a value of 1 if the largest shareholder is that specific type of shareholder, and 0 otherwise.
%Insider, %Institutional, %Nonfinancial, %Government	The aggregate *disclosed* voting stake (larger or equal to 1%) of each type of ultimate shareholder that is present in the company (larger than or equal to 1% of the voting rights).
Control variables	
SIZE	Market value data for the fourth quarter of the year before the AGM took place is retrieved from Datastream. The variable is calculated by multiplying the share price by the number of ordinary shares in issue. Note that Datastream only includes ordinary shares in its market value data.
Index	The index (or indices) of which the company is part of. Companies can be dual listed.
Sector	The ICB-supersector category to which the company belongs.
TI, PI	Total Return Index (TI): this shows a theoretical growth in value in millions of euro of a shareholding over a specified period, under the assumption that dividends are re-invested to purchase additional units of an equity or unit trust at the closing price applicable on the ex-dividend date. Price Index (PI): The price index expresses the share price as a percentage of its value on the base date, adjusted for capital changes.

Table A.2. (Appendix) reports the Pearson correlations between the independent variables. In this table, we highlighted all Pearson correlations that are statistically significant at the 5% level and have a correlation coefficient of 0.5 or more. One may note, *inter alia*, a high correlation between the ownership concentration and voting power variables, and between some of the type of investor variables and the ownership concentration and voting power variables. We take into account these findings in constructing our models and the analyses in this chapter.

6. STATISTICAL MODEL

6.1. Fixed and Random Effects

We conduct a panel data analysis since our data contains cross-sectional and time series dimensions.[375] In the words of Cameron and Trivedi (2005), 'panel data are repeated observations

[375] In this study, when we state that the significance level is 'lower', we mean that the estimator is less significant, i.e., the 0.1% level is the 'highest' significance level that is reported in this section.

on the same cross section, typically of individuals or firms in microeconomics applications, observed for several time periods' (p. 697). Our repeated observations on the same cross section are the 251 listed companies in our sample and the time series dimension consists of five years ($T = 5$). The error term in panel data models is usually described as:[376]

$$\varepsilon_{it} = a_i + u_{it},$$

where u_{it} is assumed to be homoscedastic and not correlated over time. The term a_i is time invariant and homoscedastic across individuals. It is often described as unobserved individual characteristics (also called unobserved heterogeneity) that do not vary over time.

Two commonly used panel data models are the fixed effects model and the random effects model. The random effects model assumes that x_{is} is independent of ε_{it} $\forall$ *s,t*. In other words, the observable regressors x_{it} are uncorrelated with the unobservable characteristics in both a_i and u_{it}. However, in many applications this assumption is considered too strict, and that actually $E\{x_{it}\, a_i\} \neq 0$.[377] The fixed effects model does not require that a_i and x_{it} be uncorrelated. Individual-specific intercept terms are included in the fixed model (i.e., the 'fixed effects') that can be described in the following manner:

$$y_{it} = a_i + x_{it}'\beta + u_{it},$$

where a_i are fixed unknown constants[378] and u_{it}, the error term, is iid[379] over *i* and *t*. To obtain the estimator for the fixed effects model, often referred to as the 'within estimator' (Cameron and Trivedi, 2005; Verbeek, 2012), we can transform the data. As Cameron and Trivedi (2005) put it, the fixed effects estimator 'measures the association between individual-specific deviations of regressors from their time-averaged values and individual-specific deviations of the dependent variable from its time-averaged value' (p. 703), thereby using the variation in the data over time. The within transformation provides us with:

$$\begin{aligned} & y_{it} - \bar{y}_i \\ &= (\alpha_i - \alpha_i) + (x_{it} - \bar{x}_i)'\beta + (u_{it} - \bar{u}_i) \\ &= (x_{it} - \bar{x}_i)'\beta + (u_{it} - \bar{u}_i), \end{aligned}$$

since the α_i terms cancel.[380]

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376 The explanation of the panel data models in this paragraph uses Verbeek's notations and terms (2012), chapter 10.

377 A common example often used to describe the effect of unobserved individual characteristics is the application of wages: a person's unobserved ability is likely to affect his or her wages (in this case, the dependent variable y_{it}), but will also have an effect on the level of education that is included as one of the regressors (x_{it}).

378 This implies that the model includes *N* dummies. Note that the term β_0 is omitted, due to the individual intercepts a_i.

379 'iid' means independently and identically distributed over individuals over time. The random effects model can be described as $y_{it} = \beta_0 + x_{it}'\beta + a_i + u_{it}$, where u_{it} is iid over *i* and *t* with mean zero and variance σ_u^2 and a_i is iid across individuals with mean zero and variance σ_a^2. a_i and u_{it} need to be 'mutually' independent and independent of x_{is} (for all *i, t*).

380 The average a_i does not vary for each individual.

This is a regression model in deviations from individual means and does not include the unobserved individual characteristics (Verbeek, 2012, p. 377). One should note that in both the fixed effects and random effects models the strict exogeneity assumption $E\{x_{it}\, u_{is}\} = 0\ \forall\ s,t$ must hold. The random effects model also assumes that a_i and x_{it} are uncorrelated, however. The fixed effects estimator controls for all *time invariant* omitted variables (thus, for all that does not vary over time) that drive the independent variable. Thus, the fixed effects estimator also controls for unobserved or unknown omitted variables, and clearly reduces any possible omitted variable bias. As Cameron and Trivedi (2005, p. 715) argue: 'the fixed effects model has the attraction of allowing one to use panel data to establish causation under weaker assumptions', i.e., $E\{x_{it}\, a_i\} \neq 0$. Unfortunately, this model usually obtains higher standard errors because only within-individual information is used. In contrast, the random effects estimator also makes use of information between observations and thus is a more efficient estimator generally. There is thus a trade-off between consistency and efficiency (Allison, 2009).

To decide whether to use the fixed effects model or random effects model, we conduct a Hausman test that compares the fixed effects and random effects estimator. It tests the null hypothesis that the unobserved individual characteristics and the explanatory variables are uncorrelated (Cameron and Trivedi, 2005, p. 717). The null is rejected in all tests and accordingly, the fixed effects model is the appropriate model to use in our analysis.[381] However, since firms are heterogeneous, we do not use a substantial part of the variation in our data when using the fixed effects model. Thus, we decided to include the random effects estimators for total turnout rates and small turnout rates in the appendix of this chapter (tables A.4 and A.5). Table A.3 in the appendix shows that the between variation in the dependent variables is around twice as large as the within variation.[382]

We test for heteroscedasticity as well. Simply stated, heteroscedasticity arises if different error terms do not have identical variances, which causes statistical problems. The tests reveal that there is indeed heteroscedasticity in this sample, and hence we use heteroscedasticity-robust standard errors in the next analyses.[383] Our data also shows that serial correlation is present.[384] To control for this statistical problem, we use cluster-robust standard errors in our analyses.[385]

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[381] Analysing the models that are reported in Table 4 and 5 (*cf. infra*, section 8 of this chapter) shows that the correlation between the fixed effects and the explanatory variables, i.e. $E\{x_{it}\, a_i\}$, are between -0.23 and -0.57 for the models with TURNOUTlog as the dependent variable, and between -0.30 and -0.84 for the models with TURNOUTsmall as the dependent variable. These results indicate that the fixed effects model is the appropriate model.

[382] One may also note that the rho, which denotes the proportion of variance in the dependent variable that is attributable to the fixed effects (i.e., intraclass correlation) is rather large in the models that are reported in table 4 and 5 (*cf. infra*, section 7).

[383] This test is the user-written program 'xttest3' described as the Modified Wald test for groupwise heteroscedasticity in a fixed effect regression model.

[384] Using the user-written xtserial program in STATA. However, note that we have a panel data set with short time periods.

[385] We also tested for normality of the residuals. We plotted the distribution of the residuals (command 'kdensity'), the standardized normal probability plot ('pnorm'), and the quantiles of the residuals ('qnorm') for each model in table 4 and 5 to see whether the residuals are normally distributed (the latter two plots show non-normality in the middle and tails of the distribution, respectively).

6.2. Transformation of the Dependent Variables

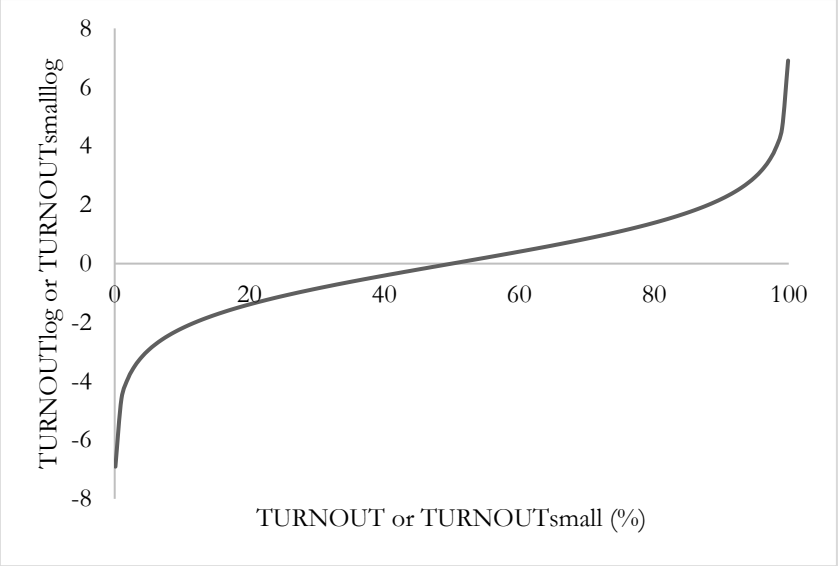
The dependent variables in our model are total shareholder turnout and small shareholder turnout expressed as percentages. For our regression analyses we consider whether a transformation of our data would be required. The transformation is important since the predicted values of the dependent variables cannot be smaller than 0 or larger than 100%, and the OLS model may estimate predictions outside this [0,100] interval. To overcome this problem, we can use the following transformation, also employed by Renneboog and Szilagyi (2013):

$$ln[y/(100-y)],$$

where *y* is TURNOUT or TURNOUTsmall in %. This log transformation can be displayed in the following figure:

FIGURE 1

Logit Transformation

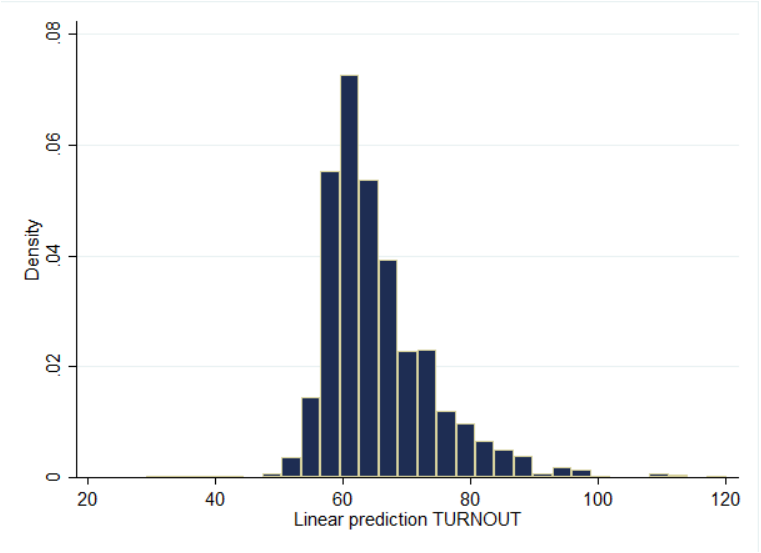


For interpretation of the output it is more straightforward to present results without this logit transformation. To see whether the problem would be severe in our dataset,[386] we look at our dependent variables. The variable TURNOUT (in percentage) ranges between [15.22; 99.98], whereas the variable TURNOUTsmall (in percentage) ranges between [0; 83.73]. If we take a closer look, we can see that only for 46 of the 1,255 observations is TURNOUT larger than or equal to 90%, whereas only for 49 of the 1,255 observations TURNOUTsmall is smaller than or equal to 10%. We also predict the turnout rates. The predictions are shown in figure 2 and 3:

[386] One may note that the problem is severe if the turnout rates are close to the boundaries of the intervals. Also see Mattila (2003); Geys (2006).

FIGURE 2

Predicted TURNOUT[387]

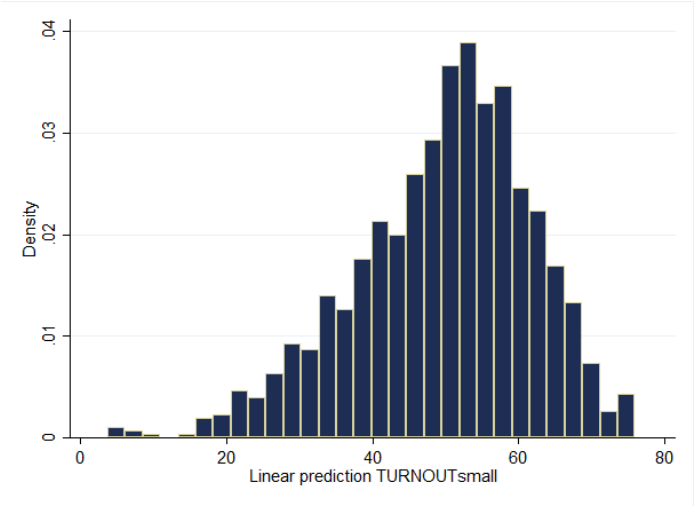


Variable	Obs	Mean	Std. Dev.	Min	Max
pr1	1,247	65.59	8.96	29.20	120.10

Figure 2 displays predicted values that are larger than 100% (and skewed to the right): this is the case for 14 observations (~ 1% of all observations). Although this problem is only present for a small number of observations, these findings indicate that we should use the Renneboog and Szilagyi (2013) linear transformation for the dependent variable TURNOUT. Next, we examine TURNOUTsmall:

FIGURE 3

Predicted TURNOUTsmall[388]



Variable	Obs	Mean	Std. Dev.	Min	Max
pr2	1,247	49.71	12.15	3.70	76.00

[387] Using STATA-commands 'predict pr1', 'hist pr1', 'sum pr1' and 'count if pr1>100'. Figure 2 shows the predicted outcomes for the complete fixed effects model.

[388] Using STATA-commands 'predict pr2', 'hist pr2', 'sum pr2' and 'count if pr2<0'. Figure 3 shows the predicted outcomes complete fixed effects model.

Figure 3 shows that the variable TURNOUTsmall does not cause any problems. We do not perform a linear transformation for this variable. As we have seen in the previous chapter, for 17 companies, small shareholder turnout was set to zero (*cf. infra*, chapter two, section 4). In order to obtain sound results we conduct the analyses in the next sections with and without these 17 observations.[389]

6.3. State Dependency

Could voter turnout in year *t* depend on the voter turnout the previous year, thus in year *t-1* (i.e., that there are dynamic effects)? Consider a linear dynamic panel data model with a lagged dependent variable that is described as:

$$y_{it} = a_i + x_{it}'\beta + \gamma y_{i,t-1} + u_{it},$$

for $i = 1, ..., N$ and $t = 2, ...,T,$ and where it is assumed that u_{it} is iid $(0, \sigma^2_u)$. Note that the lagged variable $y_{i,t-1}$ will depend on a_i, the fixed effects. Hence, the random effects model is inconsistent. Moreover, the fixed effects estimator is inconsistent for a fixed amount of time periods as the strict exogeneity assumption is violated as well (Verbeek, 2012). As such, when current voter turnout rates depend on past ones we cannot use these estimators. Instead, we perform a general method of moments (GMM) estimation method that is based on the moment condition that the turnout rates of (small) shareholders of two periods in the past are uncorrelated with the difference between the error term today and one period in the past (GMM estimator of Arellano and Bond, 1991).[390] For estimating the dynamic model we do not use the log-transformed dependent variables.

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[389] The estimators for the sample without the 17 observations are not displayed in this chapter, but the results are similar.

[390] First, we transform the data to obtain the first difference is obtained in order to eliminate the fixed effects;

$$y_{it} - y_{i,t-1} = \gamma(y_{i,t-1} - y_{i,t-2}) + (u_{it} - u_{i,t-1}).$$

Next, we use the dependent variable of two periods ago ($y_{i,t-2}$) as our instrument: this instrument is correlated with $y_{it} - y_{i,t-1}$ (*relevance condition*), but not with $u_{it} - u_{i,t-1}$ (*exclusion restriction*) (Verbeek, 2012; Cameron & Trivedi, 2005). In order for the exclusion restriction to hold, the first-differenced errors should not be auto-correlated at higher orders (in our case, order two). In order to test for this, we use the post-estimation command 'estat abond' for the dynamic models that are reported in table 4 and 5 (*cf. infra*, section 8 of this chapter). We cannot reject the null hypothesis that there is no autocorrelation in the second order for these models. Hence, $y_{i,t-2}$ satisfies the conditions for an instrumental variable estimator. Based on this moment condition that the turnout rates of two periods ago are uncorrelated with the difference between the error term today and one period ago, we perform general method of moments estimation using the GMM estimator of Arellano and Bond (1991). The authors derive a consistent GMM estimator for the parameters of a dynamic panel data model. The stata-command 'xtabond' implements this estimator. Also see the Stata manual on xtabond, <http://www.stata.com/manuals13/xtxtabond.pdf>. (accessed in March 2015).

7. EMPIRICAL RESULTS

7.1. Total Shareholder Voter Turnout

Table 4 shows the panel data models with total shareholder voter turnout as the dependent variable.[391] The sector and index variables are fixed effects and hence omitted from the fixed effects models. The random effects models are displayed in the appendix to this chapter (table A.3). Models 1-4, 6 and 7 consider the full sample and models 5 and 6 take only into account the UK companies in our sample. Models 1 and 2 and 5 and 6 are fixed effects models, models 3 and 4 dynamic models to account for dynamic effects, and models 7 and 8 random effects models that include country dummies to account for country-specific effects. In models 1 and 2 and 4-8 the dependent variable is the transformed TURNOUT, i.e. TURNOUTlog. In the dynamic models we do not use this transformation. All these aforementioned models are displayed to increase the transparency of our research: the nature of our data is complex and for some countries we have few observations. The results that are shown are robust and valid, but it is important to take the sometimes lack of data into account.

Models 3 and 4 show that the lagged dependent variable is statistically significant at the 5% level. From these two models we can conclude that dynamic effects are present in turnout rates. In other words, there is state dependency, which implies some level of persistence in total shareholder turnout rates: a 1% increase in last year's total shareholder turnout rate implies an increase in the total shareholder turnout rate of the current year between 0.21 and 0.23%.

Next we discuss the other independent variables. To do so, we consider the static and dynamic models. First of all, we consider the ownership concentration variables. We see that ownership concentration contributes to shareholder turnout rates in general, in agreement with Van der Elst's findings (2011). The Banzhaf index for the largest shareholder displays a negative effect on total shareholder turnout, which is statistically significant in the UK models and in the dynamic models. This may indicate that shareholders are less eager to attend the shareholder meeting when the largest shareholder has more voting power. Furthermore, the Shapley-Shubik index for small shareholders shows a positive effect on turnout rates that is statistically significant in all full sample models. From the dynamic models we can learn that the coefficient of the Shapley-Shubik index is quite large (around 7%), but one should keep in mind that a 1% increase in the Shapley-Shubik index is relatively substantial due to the nature of this variable. To conclude, these findings tell us that when ownership concentration is higher, shareholder turnout is higher, but a more unequal division of voting power leads to lower shareholder turnout rates.

The 'importance of the meeting' variables also exhibits some noteworthy effects. We can confirm that the number of directors that are to be (re-)elected positively contributes to total shareholder turnout. However, when we look at the dynamic models, we observe a strong *negative* effect for the dummy that indicates whether directors are to be (re-)elected. This effect is not present in the other models. Also, the number of directors that are to be (re-)elected does not contribute to shareholder turnout in the dynamic models. These (dynamic) results should therefore be addressed with some caution and we do not draw any strong conclusions from them. The

[391] In the second chapter we noted a substantial decrease in German turnout rates in the 2012-2013 period. We did not find any reasons for this substantial decrease. We decided to keep the German companies in our analyses in this chapter, but in order to provide a robustness check we display the regression results without the German companies in table A.7 of the appendix to this chapter (also for small shareholder turnout).

number of shareholder proposals that are on the agenda negatively influences turnout rates in the UK. With respect to the agenda items dummies, we only see a strong positive effect from the approval of the remuneration report. Note that this variable is omitted from the UK sub-sample models since this agenda item is mandatory in the UK. We tend to conclude that shareholders indeed are more likely to join the AGM the greater the importance of the meeting; board (re-)elections and approval of the remuneration report are considered two of the most important agenda items (Conyon and Sadler, 2010; Van der Schee, 2012). Agenda items concerning amendments to the articles of association, generally considered important as well, show a negative effect for UK companies. We do not observe these effects in the other models. The dummy GM14days shows in the full-sample fixed effects models a statistically significant, negative effect, which is also present in the random effects models with country dummies. One may note that this effect is not present in the models for the UK-sample; we therefore suspect that the negative effect is (partly) caused by the Irish companies in the complete sample.

Regarding the types of shareholders, we can conclude that governmental presence, but also the presence of non-financial companies as shareholders, generally contributes to shareholder turnout. In the dynamic model (model 3) these effects are not present. Government presence does have a positive effect in the UK models either. The effects of other type of shareholder variables are less clear, which means that we cannot confirm or reject our hypotheses, but due to incomplete information problems, our types of shareholder variables are merely ownership concentration measures. We further discuss this problem in the next section and in the appendix to this chapter (section 7.2., small shareholder voter turnout, table A.6 of the appendix).

Lastly, regarding the random effects models (models 7 and 8): Austria is the base country for the country dummies in models 7 and 8. We can see that only in Belgium are shareholder turnout rates are statistically significantly lower than in Austria. And when a company is situated in the Netherlands, Ireland or the UK, its voter turnout significantly increases, *ceteris paribus*. The coefficient for the Netherlands is somewhat larger than the coefficient for the UK, which is remarkable.[392]

[392] We also estimated the random effects models using a dummy for the common law family (UK and Ireland) instead of the country dummies. These models report similar results, including a statistically significant (0.1% level) positive coefficient of 0.549 for the dummy variable that denotes the common law family in the complete model (model 7 of table 4, dependent variable: TURNOUTlog).

TABLE 4

Panel Data Analysis Fixed Effects Cluster-Robust Estimator (Total Shareholder Turnout)

	Full sample fixed effects		**Full sample dynamic model**		**UK sample fixed effects**		**Full sample random effects**	
	Full fixed effects model	*Reduced fixed effects model*	*dynamic Model* [a]	*Reduced Dynamic model* [a]	*Full fixed effects model*	*Reduced fixed effects model*	*Full random effects model*	*Reduced random effects model*
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Dependent variable	TURNOUTlog	TURNOUTlog	TURNOUT	TURNOUT	TURNOUTlog	TURNOUTlog	TURNOUTlog	TURNOUTlog
Lagged								
L.TURNOUT			0.207*	0.230*				
			(0.102)	(0.0895)				
Ownership concentration								
Concentration1	No effect		No effect		No effect		No effect	
HHI	0.000241*	0.000305***	0.00506*	0.00782***	0.000103	0.000177**	0.000381***	0.000360***
	(0.000112)	(0.0000764)	(0.00229)	(0.00142)	(0.000108)	(0.0000662)	(0.000112)	(0.0000650)
BLOCK	No effect		No effect		0.00690*	0.00583*		
					(0.00297)	(0.00285)		
R12	No effect		No effect		No effect		No effect	
BANZHAFsmall	No effect		No effect		-0.361†	No effect	No effect	
					(0.200)			
BANZHAFlarge	No effect		-0.115*	-0.0844**	-0.00700***	-0.00596**	No effect	
			(0.0484)	(0.0259)	(0.00143)	(0.00195)		
SHAPLEYsmall	0.388*	0.540***	7.063*	6.705†	No effect		0.452**	0.578***
	(0.150)	(0.151)	(3.404)	(3.442)			(0.159)	(0.154)
Importance of the Meeting								
Elections	0.00711†	0.00713*	No effect	No effect	0.0110*	0.0159***	0.00698†	0.00816*
	(0.00368)	(0.00350)			(0.00436)	(0.00393)	(0.00356)	(0.00330)
Items	0.00362†	No effect	No effect		No effect		No effect	
	(0.00214)							
Rejections	No effect		No effect		No effect		No effect	
Shareholders	No effect		No effect		-0.169***	-0.136**	No effect	
					(0.0496)	(0.0472)		
Opposition	No effect		No effect		No effect		No effect	
dDirector(re-)elect	No effect		-1.907*	-1.766*	No effect		No effect	
			(0.850)	(0.801)				
dRemunerationreport	0.286***	0.304***	3.799*	3.995**	omitted		0.310***	0.315***

	(0.0703)	(0.0714)	(1.663)	(1.462)			(0.0690)	(0.0699)
dSoPother	No effect		No effect		No effect		No effect	
dCapital	No effect		No effect		omitted		No effect	
dPreemption	No effect		No effect		No effect		No effect	
dDischarge	No effect		No effect		omitted		No effect	
dGM14days	-0.153†	-0.177*	No effect		No effect		-0.185*	-0.208*
	(0.0895)	(0.0867)					(0.0837)	(0.0810)
dAmendments	No effect		No effect		-0.0751**	-0.0764**	No effect	
						(0.0278)		
dRPT	No effect		No effect		omitted		No effect	
Types of Shareholders								
dInsider	No effect		No effect		-0.230†		No effect	
					(0.133)			
dInstitutional	No effect		No effect		No effect		No effect	
dNonfinancial	No effect		No effect		No effect		No effect	
dGovernment	No effect		No effect		No effect		No effect	
%Insider	No effect	No effect	No effect		No effect	No effect	No effect	0.00843*
								(0.00375)
%Institutional	0.00552†	No effect	No effect		No effect	No effect	No effect	No effect
	(0.00298)							
%Nonfinancial	0.0173**	0.0152*	No effect		0.0566***	0.0433***	0.0115*	0.0137***
	(0.00636)	(0.00597)			(0.0123)	(0.00889)	(0.00555)	(0.00400)
%Government	0.0224***	0.0271***	No effect		No effect	No effect	0.0202***	0.0183***
	(0.00671)	(0.00801)					(0.00562)	(0.00494)
Control Variables								
logSIZE	0.351***	0.166***	No effect		No effect		0.151**	
	(0.0404)	(0.0425)					(0.0546)	
logPI	No effect		No effect		No effect		No effect	
logRI	No effect		No effect		0.138†		No effect	
					(0.0763)			
Index	omitted		omitted		omitted			
Sector	omitted		omitted		omitted		No effect	
dAustria							omitted	omitted
dBelgium							-0.592***	-0.596***
							(0.146)	(0.132)
dGermany							No effect	No effect
dFrance							No effect	No effect
dIreland							0.669**	0.565***

							(0.249)	(0.166)
dNetherlands							0.806*	0.865*
							(0.362)	(0.348)
dUK							0.750**	0.616***
							(0.252)	(0.167)
Other information								
_cons	-1.613***	-1.867***	No const	No const	0.0673	0.892***	-1.906***	-2.024***
	(0.367)	(0.429)			(0.824)	(0.220)	(0.444)	(0.361)
N	1246	1248	748	752	503	505	1246	1249
adj. R^2	0.545	0.521			0.292	0.220		
Rho	0.938	0.896			0.886	0.866	0.843	0.833

Note: the table displays panel data regressions (fixed effects for models 1-2 and 5-6, Arelano-Bond estimator for models 3-4, and random effects for models 6 and 7). The dependent variable is either TURNOUT or the logit transformation of total shareholder voter turnout TURNOUTlog, calculated as: ln[%TURNOUT/(100% - %TURNOUT)]. logRI is the natural logarithm of the total return index, logPI the natural logarithm of the price index and logSIZE the natural logarithm of market value. Cluster-Robust standard errors are in parentheses (robust standard errors for the Arelano-Bond estimators). Rho denotes the proportion of variance in the dependent variable attributable to fixed effects (intraclass correlation). 'No effect' indicates that the result was not statistically significant at the 10% level, and hence, the effect may not be different from 0.

†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

7.2. SMALL SHAREHOLDER VOTER TURNOUT

Table 5 shows the panel data models for small shareholder voter turnout. Again, we ran fixed effects (model 1-2 and 4-5, the latter models with the UK sub-sample), a dynamic model with GMM estimator of Arellano and Bond (model 3), and random effects with country dummies (models 6-7). Table A.5 in the appendix to this chapter has the random effects models and Table A.7 the fixed effects models for a sub-sample without German companies. In all seven models presented in table 5 the dependent variable is TURNOUTsmall. We also conducted these analyses without the 17 observations for which a small shareholder turnout rate of zero was reported (*cf. supra*, chapter 2, nt. 246). The findings (not reported in this research) were similar and thus these 17 observations did not cause any bias.

First, we can see from model 3 that the lagged dependent variable does not have any significant effect (denoted as 'no effect' in table 5). We therefore conclude that there is no state dependency involved. For this reason, we do not display the reduced dynamic model in table 5.

The results in table 5 show that ownership concentration indeed negatively contributes to small shareholder turnout. Hence, like the findings of Van der Elst (2011), we can confirm our hypothesis that the more concentrated the ownership structure, the less likely small shareholders are to attend the AGM.

Next we discuss the effect of voting power on small shareholder turnout. The voting power of the largest shareholder shows a statistically significant negative effect on small shareholder voter turnout several models reported in table 5, but not in the reduced fixed effects models for the full sample. The other voting power measures, the Shapley-Shubik index for a hypothetical small shareholder that holds a voting stake of 1% (SHAPLEYsmall) and the Banzhaf index for a hypothetical small shareholder with a 1% voting stake (BANZHAFsmall), seem not to contribute to small shareholder turnout rates in the static models. However, SHAPLEYsmall shows a positive effect that is statistically significant at the 10% level in the dynamic model. The magnitude of the effect is again substantial at almost 12%, but one may note that an increase of 1% in the Shapley-Shubik index for a small shareholder that holds 1% of the voting rights is relatively substantial. From these results we cannot fully confirm our second hypothesis, although there are some suggestions that small shareholders take into account voting power. In table 6 we include interaction terms to account for the effects of ownership concentration in the type of shareholder variables: in these models too we see that SHAPLEYsmall contributes to small shareholder turnout. These models suggest that the Shapley-Shubik index for small shareholders has more explanatory power than the Banzhaf index for small shareholders (*cf. supra*, section 6 of chapter 2).

As for the variables related to the importance of the meeting, the number of directors (re-)elected during the AGM has a positive effect in the reduced fixed effects model (model 2) at the 1% significance level, and in the UK sub-sample models, the dynamic model, and the reduced random effects model at the 5% level. The number of shareholder proposals has a statistically significant negative effect on small shareholder voting in the UK. When we consider at the voting item dummies, we see that the remuneration report dummy shows a strong positive effect on small shareholder turnout that is statistically significant at the 0.1% level in all models. The dummy variable for the agenda item 'discharge' shows a positive effect that is statistically significant at the 10% level in the first fixed effects model for the complete sample. In general, we can conclude that small shareholders care most about important agenda items such as the remuneration report and director elections. However, it is important to note that we have found that voting items regarding

amendments of articles of association negatively influence UK (small) shareholder voter turnout (variable 'Amendments'), but have no explanatory power in the full sample models. One should note that we did not distinguish between the different types of amendments. Moreover, some companies use several agenda items for different amendments, for instance per article, whereas others use only one voting item for amending different articles.

Regarding the random effects models (models 6 and 7), we note again that only in Belgium are small shareholder turnout rates are statistically significantly lower than in Austria. The coefficient for the Netherlands is smaller than the coefficient for the UK, in contrast to total shareholder turnout (*cf. supra*, table 4).[393]

Lastly, we consider the effect of the different types of shareholders. The variable that denotes the magnitude of the aggregate *disclosed* stake of non-financial companies is statistically significant in all models (except for the dynamic one). The magnitude of the disclosed stake of governments also contributes to small shareholder turnout in the fixed effects models for the complete sample.

[393] We estimated the random effects models using a dummy for the common law family (UK and Ireland) instead of the country dummies for small shareholder turnout as well. Also these models report similar results, including a statistically significant (1% level) positive coefficient of 9.1 for the dummy variable that denotes the Common law family in the complete model (model 6 of table 5).

TABLE 5

Panel Data Analysis Small Shareholder Turnout

		Full sample		**UK sample**		**Country dummies**	
	Full model	*Reduced model*	*Dynamic model*	*Full model*	*Reduced model*	*Full model*	*Reduced model*
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Dependent variables	TURNOUT small	TURNOUT Small	TURNOUT Small	TURNOUT small	TURNOUT small	TURNOUT small	TURNOUT small
Lagged							
L.TURNOUTsmall			No effect				
Ownership concentration							
Concentration1	0.750†	No effect	0.0472	0.0181		1.109**	No effect
	(0.418)		(0.0312)	(0.0123)		(0.339)	
HHI	No effect			No effect		-0.00717*	
						(0.00302)	
BLOCK	-0.603***	-0.670***	-0.614***	-0.262**	-0.301***	-0.543***	-0.454***
	(0.0887)	(0.0900)	(0.106)	(0.0871)	(0.0702)	(0.0849)	(0.0739)
R12	No effect		No effect	No effect		No effect	
BANZHAFsmall	No effect		No effect	No effect		No effect	
BANZHAFlarge	-0.179*	No effect	-0.162*	-0.217***	-0.0865*	-0.159*	No effect
	(0.0818)		(0.0786)	(0.0497)	(0.0412)	(0.0766)	
SHAPLEYsmall	No effect		11.68†	No effect		No effect	
			(6.844)				
Importance of the Meeting							
Elections	No effect	0.290**	0.298†	0.290*	0.325*	No effect	0.2361*
		(0.103)	(0.169)	(0.129)	(0.1281)		(0.1029)
Items	No effect		No effect	No effect		No effect	
Rejections	No effect		No effect	No effect		No effect	
Shareholder	No effect		No effect	-3.747**	-3.114*	No effect	
				(1.304)	(1.2040)		
Opposition	No effect		No effect	No effect		No effect	
dDirector(re-)elect	No effect		-2.780*	No effect		No effect	
			(1.293)				
dRemunerationreport	10.32***	10.898***	7.160**	omitted		10.91***	11.186***
	(2.255)	(2.2691)	(2.760)			(2.405)	(2.554)
dSoPother	No effect		No effect	No effect		No effect	
dCapital	No effect		No effect	omitted		No effect	
dPreemption	No effect		No effect	No effect		No effect	
dDischarge	7.037†	No effect	No effect	omitted		No effect	
	(4.163)						
dGM14days	No effect		No effect	No effect		-3.311†	-3.0105†
						(2.007)	(1.816)
dAmendments	No effect		No effect	-2.037*	-2.160**	No effect	
				(0.803)	(0.805)		
dRPT	No effect		No effect	omitted		No effect	
Types of Shareholders							
dInsider	No effect		No effect	No effect		No effect	
dInstitutional	No effect		No effect	No effect		No effect	
dNonfinancial	No effect		No effect	No effect		No effect	
dGovernment	No effect		No effect	No effect		No effect	
%Insider	No effect	0.264†	No effect	No effect	No effect	No effect	
		(0.155)					
%Institutional	No effect	No effect	No effect	No effect	No effect	No effect	
%Nonfinancial	0.440*	0.477**	No effect	1.568***	0.984***	0.323*	0.2156**
	(0.194)	(0.181)		(0.264)	(0.160)	(0.159)	(0.06816)
%Government	0.418†	0.305†	No effect	No effect	No effect	No effect	
	(0.241)	(0.163)					

Control Variables							
logSIZE	No effect		No effect	-3.657†	No effect	No effect	4.504***
				(1.890)			(0.986)
logPI	No effect		No effect	No effect		3.788***	-2.302***
						(0.859)	(0.808)
logRI	No effect		No effect	No effect		-1.892**	
						(0.686)	
Index	omitted		Omitted	omitted		omitted	
Sector	omitted		Omitted	omitted		No effect	
Country dummies							
dAustria						omitted	omitted
dBelgium						-23.72***	-23.36***
						(3.811)	(3.856)
dGermany						13.97**	13.62***
						(5.401)	(3.337)
dFrance						6.155	5.741
						(3.951)	(3.826)
dIreland						10.53	6.340
						(6.595)	(5.045)
dNetherlands						10.42*	10.04*
						(4.098)	(4.015)
dUK						16.81**	12.64**
						(6.319)	(4.479)
Other information							
_cons	23.05†	44.13***	no const	50.26*	38.22†	12.97	30.01***
	(13.89)	(7.848)		(25.30)	(21.97)	(11.01)	(4.296)
N	1231	1254	725	503	502	1246	1247
adj. R^2	0.205	0.204		0.415	0.359		
Rho	0.799	0.785		0.908	0.885	0.556	0.551

Note: the table reports panel data regressions (fixed effects for models 1-5 and random effects for model 6 and 7). The dependent variable is TURNOUTsmall. logRI is the natural logarithm of the total return index, logPI the natural logarithm of the price index and logSIZE the natural logarithm of market value. Cluster-Robust standard errors are in parentheses. Rho indicates the proportion of variance in the dependent variable that is attributable to the fixed effects (intraclass correlation). 'No effect' indicates that the result was not statistically significant at the 10% level.

† $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

The aggregate ownership stake of any shareholder type displays a positive effect on small shareholder turnout (insignificant effects are reported in the table, but denoted as 'no effect'). One of our incomplete information problems is that we are only able to identify the aggregate stake of a particular type of shareholder whose ownership stake is disclosed (*cf. supra*, section 5 of chapter 2) – which is the larger shareholder. Thus, for example, when ownership of corporate insiders is rather concentrated, the variable '%Insider' increases. This can imply that this measure rather (partly) measures the effect of ownership concentration than the effect of the presence of these corporate insiders (also see the Pearson correlations displayed in table A.2, appendix[394]). This may also hold for the other shareholder type variables.

We add interaction terms that consider both the ownership concentration and the type of shareholder to the first and second model that is reported in table 5 (fixed effects models for the full sample). These are displayed in the first and second model in table 6. As a robustness test we also estimate the interaction terms with the HHI. We find very comparable results (not reported). The third model in table 6 displays model 2 of table 5 without the ownership concentration variable 'BLOCK'.

Before we evaluate the effects of the interaction terms and type of shareholder variables, we first discuss changes in effects of the other independent variables: in particular, the voting power measures. Models 1 and 2 in table 6 show that the negative effect of the Banzhaf index for large shareholders has become more significant. The Shapley-Shubik index for small shareholders has also become statistically significant at the 5% level in these two models. These results strongly suggest that, when ownership is better specified, our second hypothesis can be confirmed. The effect of the variable 'Elections' has also become statistically significant at the 10% level in the first model and even at the 1% level in the second model. These results are in line with our third hypothesis.

[394] This table shows that the presence of corporate insiders is positively correlated with ownership concentration, whereas the presence of institutional investors is negatively correlated with the ownership concentration variables.

TABLE 6

Panel Data Analysis Small Shareholder Turnout: Models 1 and 2 with Interaction Terms

	Full model	*Reduced model*	*Reduced model without BLOCK*
	(1)	(2)	(3)
Dependent variable	TURNOUT Small	TURNOUT small	TURNOUT small
Ownership concentration			
BLOCK	-0.379***	-0.385***	
	(0.111)	(0.111)	
BANZHAFlarge	-0.244**	-0.157***	No effect
	(0.0761)	(0.0414)	
SHAPLEYsmall	9.980*	9.947*	No effect
	(5.014)	(4.781)	
Importance of the Meeting			
Elections	0.201†	0.271**	0.291**
	(0.110)	(0.101)	(0.107)
Types of Shareholders			
%Insider	0.850***	0.860***	-0.117
	(0.238)	(0.224)	(0.165)
%Institutional	0.312**	0.358**	-0.434***
	(0.112)	(0.109)	(0.104)
%Nonfinancial	1.463***	1.369***	0.0379
	(0.294)	(0.294)	(0.178)
%Government	0.522	0.513	-0.0502
	(0.376)	(0.440)	(0.168)
Interaction Terms			
%Insider*BLOCK	-0.0126***	-0.0128***	
	(0.00366)	(0.00342)	
%Institutional*BLOCK	-0.00742*	-0.00973**	
	(0.00338)	(0.00333)	
%Nonfinancial*BLOCK	-0.0192***	-0.0178***	
	(0.00462)	(0.00455)	
%Government*BLOCK	-0.00768	-0.00875	
	(0.00519)	(0.00567)	
Other information			
_cons	31.21*	40.29***	49.61***
	(12.91)	(6.017)	(8.115)
N	1247	1254	1254
adj. R^2	0.238	0.243	0.155
Rho	0.809	0.795	0.779

Note: the table reports parts of the panel data regressions (fixed effects estimators in all models) that are also shown in Table 5, but with interaction terms added. The dependent variable is small shareholder turnout (TURNOUTsmall). Cluster-Robust standard errors are in parentheses. Rho indicates the proportion of variance in the dependent variable that is attributable to the fixed effects (intraclass correlation). 'No effect' indicates that the result was not statistically significant at the 10% level.

† $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

The aggregate stake of the shareholder types shows positive effects that are statistically significant for institutional investors, corporate insiders, and non-financial companies in the fixed effects models 1 and 2. The magnitude of the coefficients is also larger. The presence of institutional investors clearly contributes to small shareholder turnout, but to a lesser extent than corporate insiders and non-financial companies. The variable that represents the aggregate stake of governments, %Government, is not statistically significant anymore.

One may note that the interaction terms all have a negative impact on small shareholder turnout rates. This indicates that the presence of these particular types of shareholders positively contributes to small shareholder voting, but when ownership concentration is higher, small shareholders tend to free-ride and refrain from voting. This is especially so where large corporate insiders or non-financial companies are present. Hence, hypothesis 4b is (at least partly) confirmed. The results show that ownership concentration partially drives the effect of the type of shareholder variables on small shareholder turnout in table 5. For example, the aggregate stake of institutional investors *an sich* has a positive effect on small shareholder turnout – just like the stake of corporate insiders, non-financial companies and governments. When we add the interaction terms the positive effect of the type of shareholder variables on small shareholder turnout increases (confirming hypotheses 4a and 5a).

The results from model 3 also confirm this result: for this model we ran model 2 of table 5 without the ownership concentration variable 'BLOCK'. We see that the shareholder type variables now show a negative impact on small shareholder turnout – in this model they rather represent an ownership concentration measure. The models that are reported in table A.6 in the appendix show less conclusive results for total shareholder turnout (with the ownership concentration variable HHI).

7.3. Robustness Concerns

In our empirical analyses, we used several methodological robustness tests as mentioned above (i.e., fixed effects models, random effects models with country dummies, dynamic models and a UK sub-sample).[395] We further address possible endogeneity concerns. The fixed effects model fully controls for fixed omitted variables, but also has the *strict exogeneity assumption* (*cf. supra*, section 6.1).[396] Unfortunately, since we do not have an instrument, we cannot test for endogeneity in the usual way. We therefore emphasise that endogeneity might be an issue in our models.[397] However,

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[395] Including the Durbin–Wu–Hausman test (or 'Hausman test') to test for model misspecification. Specifically, in a panel data setting, this test helps to choose between a fixed effects or random effects model. The null hypothesis contains that the preferred model is random effects and it tests whether the unobserved individual characteristics and the explanatory variables are uncorrelated (Cameron and Trivedi, 2005). As we have seen in section 6.1. of this chapter, the null is rejected in all tests and accordingly, the fixed effects model is the appropriate model to use in our analysis (*cf. supra*, section 6.1.).

[396] One may note that the fixed effects models essentially make use of inside instruments that fulfil the *relevance condition,* i.e., the instrument $\tilde{z}_i = (x_{it} - \bar{x}_i)$ should be correlated with the explanatory variables, which is indeed the case, and the *exclusion restriction,* which means that $\tilde{z}_i$ and u_{it}, a_i should not be correlated. The assumption in the fixed effects model is that all explanatory variables are independent of all u_{it}, i.e., the *strict exogeneity assumption*, which means that the second instrument condition ('*exclusion restriction*') holds by assumption in the fixed effects model.

[397] In addition, note that our ownership measures may suffer from measurement errors because of the potential incomplete information problems (*cf. infra*, section 4). Companies may also disclose incorrect information. Unfortunately, this concern cannot be easily addressed with standard robustness tests such as

note that Wooldridge's 'leads' approach (2002) shows that the strict exogeneity assumption is likely to hold for our key regressors.[398]

We also consider the problem of reverse causality. The purpose of our research is to see whether there are causal relationships between our dependent and independent variables. In general, there are no severe direct reverse causality problems by the nature of our data, except for two situations: i) the agenda of the AGM is changed during the meeting,[399] and; ii) shareholders change their opinion on a particular voting item during the meeting, when the voter turnout rate is already known. The first situation is exceptional, and the latter is only relevant for the 'Opposition' variable which was only marginally significant. Moreover, this only holds for shareholders that are physically present at the AGM. We do not implement additional robustness tests for these problems.

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an instrumental variable approach, as the reliability of the data depends on the quality of the information disclosed by the companies.

[398] Wooldridge (2002) offers a solution to our problem: we can add a 'lead' (p. 285) of the explanatory variables to test this strict exogeneity assumption. The coefficients of these lead variabes, δ in Wooldridge's example, should be zero. One may note that by adding the lead variables $x_{i,t+1}$, we lose the information for the year 2014 in our model. The model becomes:

$y_{it} = a_i + x_{it}'\beta + w_{i,t+1}'\delta + u_{it}$, where $t = 1,2,3,4$ and $w_{i,t+1}$ is a subset of $x_{i,t+1}$.

We tested the whether the leads of the following variables are significant for model 2 (reduced fixed effects model) of table 4 (*cf. supra*, section 7.1): *HHI, SHAPLEYsmall, Elections, dGM14days %Nonfinancial, %Government* and *SIZE* (no lead variables statistical significant, except for the lead variables of *dGM14days* and *%Nonfinancial*). For model 2 of table 5 (*cf. supra*, section 7.2): *BLOCK, SHAPLEYsmall, Elections, %Insider, %Nonfinancial* and *%Government* (no lead variables statistical significant, except for the lead variable of *%Nonfinancial*). Following these 'leads tests' of Wooldridge (2002), we can, at least to some extent, conclude that the important variables in our analyses generally do not suffer from endogeneity problems. However, since we were not able to use an instrumental variable approach, we emphasise that endogeneity might be an issue.

[399] Only a few of the 13,000 agenda items in our sample were withdrawn (a few days) before the general meeting.

8. CONCLUSIONS AND DISCUSSION

8.1. Conclusions

The aim of this part of the research was to evaluate which factors contribute to (small) shareholder participation at AGMs in Europe. We explored different factors that may influence these (small) shareholder turnout rates, which we divided into different categories; i) ownership concentration measures, ii) voting power measures, iii) 'importance of the meeting' measures, and iv) type of shareholder measures. We found that ownership concentration measures have a positive effect on total shareholder turnout rates, but negatively affect small shareholder turnout rates (confirming hypothesis 1). When small shareholders have more voting power they are more eager to vote. Similarly, when the largest shareholder has more voting power, small shareholders are less likely to attend the AGM (confirming hypothesis 2). Surprisingly, the Shapley-Shubik index for small shareholders has more explanatory power in our framework than the Banzhaf index (the latter not reported). Hence, as discussed in chapter 2, the Shapley-Shubik index probably better reflects small shareholder voting power in practice compared to the Banzhaf index. However, one should note that the effect of the Shapley-Shubik index was only statistically significant in the fixed effects models when the interaction terms with the type of shareholder variables and concentration measures were added to the models. Perhaps these voting power indices are not entirely suitable for explaining small shareholder voting. For instance, as we have seen, these indices do not consider the preferences of shareholders, do not measure voting power *a priori* and they consider all voting outcomes equally likely (*cf. supra*, chapter 2, section 6.2.1). In chapter 5 of this research we take a closer look at this matter.

We have also seen that shareholders generally consider the meeting agenda, which means that our findings at least partly confirm our third hypothesis as well. When the approval of the remuneration report is on the agenda, (small) shareholder turnout will be higher. Discharging directors also positively affects small shareholder turnout. An explanation may be that small shareholders can use these discharge resolutions as a means of expressing their dissatisfaction with corporate decision-making (Van der Elst and Lafarre, 2017), and thus these resolutions may contribute to the importance of the meeting. The number of director (re-)elections also contributes to (small) shareholder turnout.

In addition, our findings show that small shareholders tend to free-ride on large institutional shareholders and corporate insiders. However, the magnitude of the free-rider problem with larger institutional investors seems smaller than with larger corporate insiders. Small shareholders probably consider their votes to be worth less when the latter are involved.

To conclude, although the practical role of the AGM is widely criticized nowadays, the results of our analysis indicate that at least certain features of the AGM are not meaningless to small shareholders at all – even if these shareholders are confronted with the typical continental European feature of concentrated ownership – which (partly) counters this criticism. Ownership structure and voting power explain small shareholder turnout, but the types of voting items also seem to matter. Some voting items, such as adoption of the financial statements, are clearly just formalities, while others are clearly relevant to small shareholders, such as remuneration report approval. It seems that regardless of whether shareholders can influence decision-making, turnout rates are higher when these voting items are on the agenda. This behaviour may indicate that

shareholders view the AGM not only as a venue for decision-making, but also as a place to exercise information and forum rights.

To summarize, we present our findings in table 7:

TABLE 7

Findings

Factor	**Effect on TURNOUT**	**Effect on TURNOUTsmall**
Ownership concentration	+	-
Voting power (small shareholder)	+	+ (when interaction terms are added to the models).
Voting power (large shareholder)	-	-
Importance of the meeting	+	+
Corporate insiders	n.a.	+, but - for larger corporate insiders.
Institutional investors	n.a.	+, but - for larger institutional investors.

8.2. Discussion and Policy Implications

Our research provides evidence for Bebchuk's statement (2005) that AGMs should have more powers and that increasing the benefits side of the turnout decision would lead to higher attendance rates. To stimulate small shareholder monitoring and increase the relevance of AGMs, (European) policy makers may focus on the findings from this study. The research has shown that (small) shareholder turnout rises when the benefits of attendance, for instance, because of lower ownership concentration or greater voting power or a more important meeting agenda, are higher.

Increasing Small Shareholder Benefits

There are many tools in corporate governance to raise the benefits of voting to small (outsider) shareholders. For instance, as we have seen in the discussion of chapter 2's results (*cf. supra*, chapter 2, section 10.2), the new UK Listing Rules (LR 9.2.2AR jo 9.2.2ER) that provide a separate vote for outsider shareholders on the election of independent directors in companies that have a controlling shareholder, may increase the benefits of the turnout decision to these (small) shareholders. In addition, one may note that director elections drive small shareholder turnout to some extent, which means that small shareholders generally care about these voting items. National legislators in the other (continental) European Member States may consider adopting a similar rule.

But there are more options to increase small shareholder benefits. For example, the new Shareholder Rights Directive introduces a European say on pay that includes approval of the remuneration report. We have seen that this agenda item drives (small) shareholder turnout. In the 2015 version of the proposed amendments to the Shareholder Rights Directive, the EP proposed that, in case of a rejection of the remuneration report when the vote is advisory, the company should, 'where necessary, enter into dialogue with the shareholders to identify the reasons for rejection'. In

addition, the company should explain in the next remuneration report how the vote of the shareholders was taken into account. In the adopted version of article 9b by the EP and the Council, the requirement to enter into dialogue with the shareholders was deleted. This deleted rule showed some similarities with provision E.2.2 in the UKCGC (*cf. infra*, chapter 5, section 6.2.). With this new rule, companies must explain how they intend to engage with concerned shareholders when a significant proportions of the votes are against a particular resolution. These rules may increase the opportunities for (outsider) shareholders to voice their concerns and may contribute to their perceived benefits. This is in line with our findings that small shareholders may view the AGM not only as a venue for decision-making, but also as a place to exercise information and forum rights (*cf. supra*, see discussion above). However, especially in case of UK's provision E.2.2, it remains unclear how companies should engage with their shareholders, especially since the identity of small shareholders is often unknown.

Further Research

This study is one of the first to analyse shareholder turnout and it opens the door for future research. We recommend further analysis of the factors that contribute to (small) shareholder turnout. For example, as we have seen in the introduction, decision-making is only one of the three AGM functions. To see whether and to what extent the forum and information function are fulfilled in practice, AGM meeting documents may be analysed; accordingly, in chapter 6 of this research we analyse Dutch meeting documents. In addition, one should note that we only took into account the companies that are included in the main indices of the seven European countries and that our results may not hold for medium-sized and smaller firms in these countries. Further country-level analyses may lead to more generalizable results.

We have found that voting items on amendments to articles of association negatively influences UK (small) shareholder voter turnout, but have no explanatory power in the full sample models. One should note that we did not consider the content of these amendments. Further analysis in this respect may contribute to the understanding of shareholder behaviour. Regarding the effect of the types of shareholders on (small) shareholder turnout, an analysis of a larger sample of, for example, only German companies could be fruitful, since these companies usually disclose the complete (grouped) stake of the different types of shareholders in their annual reports. In addition, it would be interesting to include activist blockholders such as hedge funds in the analysis more explicitly.

APPENDIX CHAPTER 3

A.1. Information on the Variables

TABLE A.1

Descriptive Statistics Variables

Variable name	mean	median	sd	min	max
TURNOUT	65.6	67.6	14.8	15.22	99.99
TURNOUTsmall	49.7	54.3	18.1	9	83.73
C1	22.6	12.8	20.5	0	99.8
BLOCK	28.7	22.2	21.9	0	99.8
HHI	987.3	227.3	1537.5	0	9960
R12	47.5	49.0	33.1	1	100
BANZHAFsmall	0.67	0.96	0.44	0	1.70
BANZHAFlarge	41.0	16.0	40.1	1	100
SHAPLEYsmall	0.78	0.97	0.36	0	1.2
Items	12.9	12	5.7	2	59
Elections	6.1	6	4.5	0	21
Opposition	14.6	10.8	13.3	0	89.9
Rejections	0.1	0	0.3	0	4
Shareholders	0.1	0	0.5	0	8
dDirector(re-)elect	0.9	1	0.3	0	1
dRemunerationreport	0.5	1	0.5	0	1
dSoPother	0.4	0	0.5	0	1
dCapital	0.7	1	0.4	0	1
dPreemption	0.7	1	0.5	0	1
dDischarge	0.4	1	0.5	0	1
dRPT	0.0	0	0.2	0	1
dGM14days	0.4	0	0.5	0	1
dAmendments	0.3	0	0.5	0	1
%Insider	11.1	0	20.5	0	91.1
%Institutional	12.4	10.9	10.7	0	53.1
%Nonfinancial	3.2	0	11.3	0	77.1
%Government	4.8	0	14.7	0	99.8
dInsider	0.3	0	0.4	0	1
dInstitutional	0.5	1	0.5	0	1
dNonfinancial	0.1	0	0.3	0	1
dGovernment	0.1	0	0.3	0	1
logSIZE (1250 observations)	8.8	8.8	1.3	3.4	12.0
logTI (1251 observations)	7.6	7.6	2.4	-1.8	13.8
logPI (1248 obervations)	6.7	6.7	1.9	-0.1	12.3

Note: the table reports descriptive statistics for the dependent and independent variables that are used in the analyses in this chapter.

TABLE A.2

Correlation Table Independent Variables

	Concentration1	HHI	BLOCK	R12	BANZHAFsmall	BANZHAFlarge	SHAPLEYsmall	Elections	Opposition	Rejections	Shareholders	Items	dDirector(re-)elect	dRemunerationreport	dSoPother	dCapital	dPreemption
Concentration1	1.0000																
HHI	**0.9566*** 0.0000	1.0000															
BLOCK	**0.9346*** 0.0000	**0.8853*** 0.0000	1.0000														
R12	**-0.7445*** 0.0000	**-0.6089*** 0.0000	**-0.6092*** 0.0000	1.0000													
BANZHAFsmall	**-0.8670*** 0.0000	**-0.7564*** 0.0000	**-0.7420*** 0.0000	**0.8089*** 0.0000	1.0000												
BANZHAFlarge	**0.8995*** 0.0000	**0.8214*** 0.0000	**0.7575*** 0.0000	**0.8214*** 0.0000	**-0.9745*** 0.0000	1.0000											
SHAPLEYsmall	**-0.9244*** 0.0000	**-0.8245*** 0.0000	**-0.8870*** 0.0000	**0.6665*** 0.0000	**0.8279*** 0.0000	**-0.8159*** 0.0000	1.0000										
Elections	-0.1770* 0.0000	-0.1448* 0.0000	-0.1422* 0.0000	0.2250* 0.0000	0.2359* 0.0000	-0.2323* 0.0000	0.1445* 0.0000	1.0000									
Opposition	-0.1464* 0.0000	-0.1246* 0.0000	-0.1750* 0.0000	0.0598* 0.0343	0.1254* 0.0000	-0.1009* 0.0003	0.1599* 0.0000	0.0593* 0.0357	1.0000								
Rejections	0.0405 0.1515	0.0211 0.4562	0.0692* 0.0141	-0.0261 0.3553	-0.0084 0.7653	0.0453 0.1090	0.0051 0.8571	-0.0100 0.7236	**0.5058*** 0.0000	1.0000							
Shareholders	-0.0048 0.8659	0.0068 0.8099	-0.0030 0.9162	-0.0134 0.6353	0.0253 0.3704	-0.0113 0.6880	0.0318 0.2601	0.0089 0.7526	0.0555* 0.0495	-0.0218 0.4395	1.0000						
Items	-0.2011* 0.0000	-0.1833* 0.0000	-0.1971* 0.0000	0.1781* 0.0000	0.2258* 0.0000	-0.2236* 0.0000	0.1801* 0.0000	0.3832* 0.0000	0.1950* 0.0000	0.0326 0.2486	0.0466 0.0989	1.0000					
dDirector(re-)elect	-0.0917* 0.0011	-0.0790* 0.0051	-0.0787* 0.0053	0.1319* 0.0000	0.1183* 0.0000	-0.1183* 0.0000	0.0490 0.0827	0.4659* 0.0000	0.0854* 0.0025	-0.0058 0.8375	-0.0166 0.5561	0.2428* 0.0000	1.0000				
dRemunerationreport	-0.1970* 0.0000	-0.1549* 0.0000	-0.1622* 0.0000	0.2683* 0.0000	0.2512* 0.0000	-0.2614* 0.0000	0.1567* 0.0000	**0.6091*** 0.0000	-0.0331 0.2409	-0.0068 0.8097	-0.1257* 0.0000	0.2926* 0.0000	0.3266* 0.0000	1.0000			
dSoPother	0.0355 0.2093	-0.0006 0.9817	0.0050 0.8587	-0.1267* 0.0000	-0.0816* 0.0038	0.0927* 0.0010	-0.0139 0.6237	-0.2142* 0.0000	0.1277* 0.0000	0.0017 0.9526	0.0939* 0.0009	0.0195 0.4906	-0.0983* 0.0005	-0.4084* 0.0000	1.0000		
dCapital	-0.2825* 0.0000	-0.2462* 0.0000	-0.2362* 0.0000	0.2915* 0.0000	0.2944* 0.0000	-0.3059* 0.0000	0.2384* 0.0000	0.3652* 0.0000	0.1883* 0.0000	0.0665* 0.0185	-0.0433 0.1248	0.4750* 0.0000	0.1897* 0.0000	0.3578* 0.0000	-0.0566* 0.0450	1.0000	
dPreemption	-0.2140* 0.0000	-0.1894* 0.0000	-0.1739* 0.0000	0.2302* 0.0000	0.2257* 0.0000	-0.2242* 0.0000	0.1955* 0.0000	0.3119* 0.0000	0.1559* 0.0000	0.0612* 0.0301	-0.0367 0.1942	0.4015* 0.0000	0.1429* 0.0000	0.2393* 0.0000	-0.0339 0.2302	**0.7530*** 0.0000	1.0000

dDischarge	0.2374*	0.1711*	0.1909*	-0.3154*	-0.3505*	0.3409*	-0.2346*	**-0.5841***	-0.1406*	-0.0185	-0.0024	**-0.5293***	-0.3617*	**-0.6129***	0.2031*	-0.4947*	-0.3578*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.5130	0.9330	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
dGM14days	-0.2354*	-0.1944*	-0.1834*	0.3062*	0.2812*	-0.2900*	0.2039*	**0.5887***	-0.0520	-0.0113	-0.1115*	0.3409*	0.2941*	0.7933*	-0.3502*	0.4566*	0.3260*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0655	0.6900	0.0001	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
dAmendments	0.0381	0.0349	0.0378	-0.0410	-0.0198	0.0393	-0.0070	-0.1773*	0.0668*	0.0934*	0.0356	0.0248	-0.1253*	-0.1826*	0.0546	0.0054	0.0173
	0.1777	0.2166	0.1811	0.1468	0.4829	0.1642	0.8043	0.0000	0.0180	0.0009	0.2081	0.3809	0.0000	0.0000	0.0531	0.8481	0.5412
dRPT	-0.0377	-0.0342	-0.0183	0.0634*	0.0905*	-0.0559*	0.0556*	-0.0428	0.2301*	0.0322	0.1194*	0.1918*	0.0144	-0.1990*	0.1965*	0.0084	0.0178
	0.1817	0.2258	0.5165	0.0248	0.0013	0.0478	0.0488	0.1295	0.0000	0.2540	0.0000	0.0000	0.6102	0.0000	0.0000	0.7655	0.5281
dInsider	0.4585*	0.3713*	0.4295*	-0.4417*	-0.4660*	0.4946*	-0.4246*	-0.1496*	0.0676*	0.0979*	0.0771*	-0.0656*	0.0065	-0.2459*	0.1557*	-0.1061*	-0.0704*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0167	0.0005	0.0063	0.0201	0.8167	0.0000	0.0000	0.0002	0.0126
dInstitutional	**-0.6718***	**-0.5600***	**-0.6645***	**0.5999***	**0.6440***	**-0.7076***	**0.5696***	0.2405*	-0.0337	-0.0872*	-0.0904*	0.1635*	0.0938*	0.3301*	-0.1785*	0.2733*	0.1822*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.2331	0.0020	0.0013	0.0000	0.0009	0.0000	0.0000	0.0000	0.0000
dNonfinancial	0.1841*	0.1372*	0.2003*	-0.1557*	-0.1826*	0.2045*	-0.1432*	-0.0497	0.0568*	0.0129	-0.0386	-0.0494	-0.0465	-0.0398	-0.0108	-0.1165*	-0.1053*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0785	0.0443	0.6482	0.1717	0.0804	0.0997	0.1592	0.7031	0.0000	0.0002
dGovernment	0.2512*	0.2378*	0.2561*	-0.1949*	-0.2034*	0.2405*	-0.1714*	-0.0818*	-0.0915*	-0.0178	0.0839*	-0.0693*	-0.1319*	-0.1095*	0.0612*	-0.1448*	-0.0748*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0038	0.0012	0.5277	0.0029	0.0141	0.0000	0.0001	0.0301	0.0000	0.0080
%Insider	**0.6594***	**0.5972***	**0.6180***	-0.4888*	**-0.5875***	**0.6136***	**-0.6578***	-0.1300*	-0.0534	0.0564*	-0.0019	-0.0953*	0.0003	-0.2230*	0.0967*	-0.1161*	-0.0858*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0585	0.0457	0.9471	0.0007	0.9917	0.0000	0.0006	0.0000	0.0023
%Institutional	-0.4486*	-0.4200*	-0.2968*	0.4483*	0.4623*	-0.4633*	0.4529*	0.2439*	-0.0214	-0.0710*	-0.0974*	0.1260*	0.1332*	0.3839*	-0.2519*	0.2563*	0.1924*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.4493	0.0119	0.0006	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
%Nonfinancial	0.2709*	0.2339*	0.2828*	-0.1893*	-0.2446*	0.2593*	-0.2363*	-0.0508	0.0287	0.0260	-0.0264	-0.0584*	-0.0615*	-0.0394	-0.0261	-0.1458*	-0.1163*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0722	0.3094	0.3565	0.3505	0.0388	0.0294	0.1632	0.3550	0.0000	0.0000
%Government	0.4134*	0.4644*	0.4158*	-0.2325*	-0.2926*	0.3188*	-0.3262*	-0.0997*	-0.1162*	0.0397	0.0773*	-0.1020*	-0.1188*	-0.0925*	0.0261	-0.1752*	-0.1241*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0004	0.0000	0.1596	0.0062	0.0003	0.0000	0.0010	0.3547	0.0000	0.0000
logSIZE	-0.0596*	-0.0334	-0.1274*	0.0261	0.0427	-0.0686*	0.0145	0.1568*	0.0232	-0.0724*	0.1317*	0.2469*	0.0271	-0.0904*	0.0978*	0.1122*	0.1649*
	0.0351	0.2375	0.0000	0.3568	0.1317	0.0153	0.6087	0.0000	0.4117	0.0104	0.0000	0.0000	0.3390	0.0014	0.0005	0.0001	0.0000
logPI	-0.2225*	-0.2150*	-0.2030*	0.2141*	0.2150*	-0.2288*	0.1614*	0.2622*	0.0197	-0.0828*	-0.0097	0.2026*	0.1400*	0.2700*	-0.0982*	0.2208*	0.1293*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.4861	0.0034	0.7317	0.0000	0.0000	0.0000	0.0005	0.0000	0.0000
logRI	-0.2529*	-0.2284*	-0.2412*	0.2595*	0.2487*	-0.2657*	0.1958*	0.2751*	0.0123	-0.0951*	0.0144	0.2213*	0.1603*	0.2653*	-0.1033*	0.2166*	0.1360*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.6642	0.0008	0.6119	0.0000	0.0000	0.0000	0.0003	0.0000	0.0000
Index	-0.2172*	-0.1596*	-0.1875*	0.2557*	0.2862*	-0.2878*	0.2083*	**0.5394***	-0.0039	0.0246	0.0036	0.2925*	0.2047*	**0.6764***	-0.3314*	0.3266*	0.2485*
	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.8897	0.3835	0.8973	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Sector	-0.0909*	-0.0883*	-0.1027*	0.0611*	0.0640*	-0.0762*	0.0534	-0.0166	0.0644*	0.0903*	-0.0169	0.0149	-0.0030	0.0658*	-0.0344	0.0095	0.0356
	0.0013	0.0017	0.0003	0.0304	0.0233	0.0069	0.0588	0.5566	0.0225	0.0014	0.5493	0.5991	0.9146	0.0198	0.2232	0.7366	0.2075

	dDischarge	dGM14days	dAmendments	dRPT	dInsider	dInstitutional	dNonfinancial	dGovernment	%Insider	%Institutional	%Nonfinancial	%Government	logSIZE	logPI	logRI	Index	Sector
dDischarge	1.0000																
dGM14days	**-0.6631*** 0.0000	1.0000															
dAmendments	0.0923* 0.0011	-0.1348* 0.0000	1.0000														
dRPT	-0.1579* 0.0000	-0.1680* 0.0000	0.0616* 0.0290	1.0000													
dInsider	0.1780* 0.0000	-0.2666* 0.0000	0.0492 0.0815	0.1005* 0.0004	1.0000												
dInstitutional	-0.2554* 0.0000	0.3527* 0.0000	-0.0794* 0.0049	-0.0756* 0.0074	**-0.6185*** 0.0000	1.0000											
dNonfinancial	0.0275 0.3307	-0.0931* 0.0010	-0.0125 0.6576	0.0148 0.6004	-0.1702* 0.0000	-0.2976* 0.0000	1.0000										
dGovernment	0.0682* 0.0156	-0.0863* 0.0022	0.0584* 0.0385	-0.0115 0.6845	-0.2108* 0.0000	-0.3685* 0.0000	-0.1014* 0.0003	1.0000									
%Insider	0.2101* 0.0000	-0.2333* 0.0000	0.0386 0.1713	0.0538 0.0570	**0.8190*** 0.0000	-0.5321* 0.0000	-0.1473* 0.0000	-0.1586* 0.0000	1.0000								
%Institutional	-0.3126* 0.0000	0.4214* 0.0000	-0.0706* 0.0124	-0.1038* 0.0002	-0.4310* 0.0000	**0.6230*** 0.0000	-0.0955* 0.0007	-0.2592* 0.0000	-0.4324* 0.0000	1.0000							
%Nonfinancial	0.0639* 0.0236	-0.0957* 0.0007	-0.0180 0.5236	0.0210 0.4569	-0.1505* 0.0000	-0.2720* 0.0000	**0.8779*** 0.0000	-0.0674* 0.0169	-0.1393* 0.0000	-0.1282* 0.0000	1.0000						
%Government	0.0381 0.1777	-0.1026* 0.0003	0.0603* 0.0327	-0.0227 0.4210	-0.1486* 0.0000	-0.3138* 0.0000	-0.0913* 0.0012	**0.8149*** 0.0000	-0.1166* 0.0000	-0.2834* 0.0000	-0.0620* 0.0281	1.0000					
logSIZE	-0.0831* 0.0033	-0.0960* 0.0007	-0.0030 0.9164	0.1160* 0.0000	0.0077 0.7864	-0.0212 0.4550	0.0019 0.9464	0.1219* 0.0000	-0.0232 0.4127	-0.1794* 0.0000	0.0163 0.5645	0.0596* 0.0350	1.0000				
logPI	-0.2759* 0.0000	0.2964* 0.0000	-0.1084* 0.0001	0.0296 0.2961	-0.0193 0.4953	0.1957* 0.0000	-0.0423 0.1354	-0.1942* 0.0000	-0.0365 0.1975	0.1476* 0.0000	-0.0553 0.0508	-0.2445* 0.0000	0.2946* 0.0000	1.0000			
logRI	-0.2901* 0.0000	0.2923* 0.0000	-0.1177* 0.0000	0.0441 0.1186	-0.0788* 0.0053	0.2164* 0.0000	-0.0428 0.1299	-0.1550* 0.0000	-0.0936* 0.0009	0.1503* 0.0000	-0.0680* 0.0161	-0.2052* 0.0000	0.3131* 0.0000	**0.9448*** 0.0000	1.0000		
Index	**-0.6956*** 0.0000	**0.6989*** 0.0000	-0.0676* 0.0166	-0.0650* 0.0212	-0.2539* 0.0000	0.2583* 0.0000	-0.0394 0.1634	0.0050 0.8608	-0.2633* 0.0000	0.3228* 0.0000	-0.0460 0.1033	-0.0011 0.9685	0.0969* 0.0006	0.2421* 0.0000	0.2309* 0.0000	1.0000	
Sector	-0.0371 0.1891	0.0578* 0.0405	0.0004 0.9895	-0.0687* 0.0150	-0.0770* 0.0063	0.1102* 0.0001	-0.0582* 0.0393	-0.0212 0.4535	-0.1029* 0.0003	0.0164 0.5611	-0.0520 0.0658	0.0227 0.4207	-0.1096* 0.0001	-0.0609* 0.0313	-0.0840* 0.0029	-0.0339 0.2307	1.0000

Note: the tables report the Pearson correlations of the independent variables that are used in the regression framework of this chapter. Significant levels are indicated as well (second row per variable). * $p < 0.05$. We highlighted all Pearson correlations that are statistically significant at the 5% level and have a correlation coefficient of 0.5 or more. One may note, *inter alia,* a high correlation between the ownership concentration and voting power variables, and between some of the type of investor variables and the ownership concentration and voting power variables. We take this into account in our analyses in this chapter.

A.2. Random Effects

In this section we report the random effects estimators for TURNOUT and TURNOUTsmall. When we take a closer look at these two dependent variables, we obtain:

TABLE A.3

Panel Data Analysis Random Effects Cluster-Robust Estimator (Total Shareholder Turnout)

Dependent variable	**Standard deviation**	
TURNOUT	Overall	14.78
	Between	13.6
	Within	5.8
TURNOUTsmall	Overall	18.14
	Between	16.11
	Within	8.39

As this table shows, a large part of the variance stems from between observations.

TABLE A.4

Panel Data Analysis Random Effects Cluster-Robust Estimator (Total Shareholder Turnout)

	Full sample random effects		**UK sample random effects**	
	Full random effects model	*Reduced random effects model*	*Full random effects model*	*Reduced random effects model*
	(1)	(2)	(5)	(6)
Dependent Variable	TURNOUT log	TURNOUT Log	TURNOUT log	TURNOUT log
Ownership concentration				
Concentration1	No effect		No effect	
HHI	0.000432***	0.000390***	No effect	0.000191***
	(0.000111)	(0.0000653)		(0.0000514)
BLOCK	No effect		0.00906***	0.00839**
			(0.00261)	(0.00258)
R12	No effect		No effect	
BANZHAFsmall	No effect		No effect	No effect
BANZHAFlarge	No effect		-0.00693***	-0.00473**
			(0.00140)	(0.00181)
SHAPLEYsmall	0.465**	0.631***	No effect	
	(0.164)	(0.163)		
Importance of the Meeting				
Elections	0.00878*	0.00969**	0.0114**	0.0193***
	(0.00358)	(0.00338)	(0.00393)	(0.00409)
Items	No effect	No effect	No effect	
Rejections	No effect		No effect	
Shareholders	No effect		-0.118*	-0.160*
			(0.0571)	(0.0661)
Opposition	No effect		No effect	
dDirector(re-)elect	No effect		No effect	
dRemunerationreport	0.338***	0.350***	omitted	
	(0.0642)	(0.0630)		
dSoPother	No effect		No effect	
dCapital	No effect		omitted	
dPreemption	No effect		No effect	
dDischarge	No effect		omitted	
dGM14days	No effect	No effect	No effect	
dAmendments	No effect		-0.0861**	
			(0.0269)	
dRPT	No effect		No effect	
Types of Shareholders				
dInsider	No effect		-0.3041†	
			(0.15675)	
dInstitutional	No effect		No effect	
dNonfinancial	No effect		No effect	
dGovernment	No effect		No effect	
%Insider	No effect	No effect	No effect	No effect
%Institutional	No effect	0.00452†	No effect	No effect
		(0.00252)		
%Nonfinancial	No effect	0.00949*	0.0183**	0.0144***
		(0.00403)	(0.00562)	(0.00430)

%Government	0.0200***	0.0172***	No effect	No effect
	(0.00563)	(0.00492)		
Control variables				
logSIZE	0.149**	0.138***	-0.0517*	
	(0.0508)	(0.0337)	(0.0252)	
logPI	No effect		No effect	
logRI	No effect		0.138†	
			(0.0763)	
Index	No effect		No effect	0.101*
				(0.0458)
Sector	No effect		No effect	No effect
Other information				
_cons	-1.408**	-1.818***	0	0
	(0.455)	(0.359)	(.)	(.)
N	1246	1248	503	503
R^2 *overall*	0.383	0.365	0.625	0.572
Rho	0.855	0.858	0.701	0.704

Note: the table reports random effects panel data regressions. The dependent variable is the logit transformation of total shareholder voter turnout TURNOUTlog, calculated as: ln[%TURNOUT/(100% - %TURNOUT)]. logRI is the natural logarithm of the total return index, logPI the natural logarithm of the price index and logSIZE the natural logarithm of market value. Cluster-Robust standard errors are in parentheses. 'No effect' indicates that the result was not statistically significant at the 10% level.
†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

TABLE A.5

Panel Data Analysis Random Effects Cluster-Robust Estimator (Small Shareholder Turnout)

	Full sample random effects		**UK sample random effects**	
	Full random effects model	*Reduced random effects Model*	*Full random effects model*	*Reduced random effects model*
	(1)	(2)	(4)	(5)
Dependent variables	TURNOUT small	TURNOUT Small	TURNOUT small	TURNOUT small
Ownership concentration				
Concentration1	0.887**	0.775**	No effect	
	(0.343)	(0.272)		
HHI	-0.00525†	-0.00471†	No effect	
	(0.00304)	(0.00258)		
BLOCK	-0.517***	-0.569***	-0.207**	-0.208*
	(0.0833)	(0.0911)	(0.0744)	(0.0828)
R12	No effect		No effect	
BANZHAFsmall	No effect		No effect	
BANZHAFlarge	-0.133†	-0.119*	-0.211***	No effect
	(0.0716)	(0.0500)	(0.0578)	
SHAPLEYsmall	8.157†	8.080†	No effect	
	(4.855)	(4.731)		
Importance of the Meeting				
Elections	0.204†	0.305**	0.304**	0.336**
	(0.109)	(0.0973)	(0.114)	(0.114)
Items	No effect		No effect	
Rejections	No effect		No effect	
Shareholder	No effect		-2.714†	-3.162*
			(1.499)	(1.338)
Opposition	No effect		No effect	
dDirector(re-)elect	No effect		No effect	
dRemunerationreport	8.171***	8.975***	omitted	
	(1.985)	(1.813)		
dSoPother	No effect		No effect	
dCapital	No effect		omitted	
dPreemption	No effect		No effect	
dDischarge	-7.551**	-9.045***	omitted	
	(2.880)	(2.479)		
dGM14days	No effect		No effect	
dAmendments	No effect		-2.358**	-2.426**
			(0.773)	(0.784)
dRPT	No effect		No effect	
dInsider	No effect		No effect	-8.553***
				(2.471)
Types of Shareholders				
dInstitutional	No effect		No effect	
dNonfinancial	No effect		No effect	
dGovernment	-0.220†		No effect	
	(0.120)			

%Insider	No effect	0.204	No effect	0.272*
		(0.129)		(0.127)
%Institutional	No effect		-0.179†	No effect
			(0.0998)	
%Nonfinancial	No effect	0.292*	0.458*	0.450***
		(0.139)	(0.182)	(0.111)
%Government	No effect		No effect	No effect
Control variables				
logSIZE	No effect		-1.583*	No effect
			(0.703)	
logPI	3.429***		1.927†	
	(0.910)		(1.125)	
logRI	-1.761**		No effect	
	(0.670)			
Index	No effect			
Sector	No effect		No effect	
Other information				
_cons	19.73†	44.56***	53.33*	42.49†
	(11.02)	(5.789)	(23.94)	(21.88)
N	1246	1254	503	503
Overall R^2	0.398	0.336	0.242	0.177
Rho	0.617	0.646	0.678	0.709

Note: the table reports random effects panel data regressions. The dependent variable is TURNOUTsmall. logRI is the natural logarithm of the total return index, logPI the natural logarithm of the price index and logSIZE the natural logarithm of market value. Cluster-Robust standard errors are in parentheses. 'No effect' indicates that the result was not statistically significant at the 10% level.
† $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

A.3. Interaction Terms

Table A.4 (next page) shows us that ownership concentration has a positive effect on total shareholder turnout rates. In model 4, where we do not include the ownership concentration variables, the types of shareholder variables all show positive results that are statistically significant at the 0.1% level: in this model, these variables are merely ownership concentration indicators. The interaction variables give us inconclusive results.

TABLE A.6

Panel Data Analysis Total Shareholder Turnout: Models 1 and 2 with Interaction Terms

	Full sample			
	Full model	*Full dynamic model*	*Reduced model*	*Reduced model without HHI*
	(1)	(2)	(3)	(4)
Dependent variable	TURNOUT log	TURNOUT	TURNOUT log	TURNOUT log
Ownership concentration				
HHI	0.000281**	0.00794***	0.000264**	
	(0.0000897)	(0.00216)	(0.0000957)	
BLOCK	0.000596	0.0666	-0.000615	
	(0.00320)	(0.0996)	(0.00325)	
Types of Shareholders				
%Insider	0.0129	0.134	0.0101	0.0164***
	(0.00807)	(0.199)	(0.00665)	(0.00345)
%Institutional	0.00572	0.0995	0.00505	0.00888***
	(0.00376)	(0.111)	(0.00371)	(0.00256)
%Nonfinancial	0.0354**	0.416	0.0280**	0.0300***
	(0.0107)	(0.300)	(0.00845)	(0.00389)
%Government	-0.00426	-0.406	-0.0229	0.0518***
	(0.0110)	(0.268)	(0.0123)	(0.00576)
Interaction Terms				
%Insider*BLOCK	No effect	No effect	No effect	
%Institutional*BLOCK	No effect	No effect	No effect	
%Nonfinancial*BLOCK	No effect	-0.00897*	No effect	
		(0.00422)		
%Government*BLOCK	No effect	No effect	0.000577***	
			(0.000156)	
Other information				
_cons	-1.382***		-1.578***	-1.659***
	(0.354)		(0.362)	(0.474)
N	1247	749	1248	1248
adj. R^2	0.558		0.554	0.498
Rho	0.910		0.895	0.912

Note: the table reports parts of the panel data regressions (fixed effects estimator in models 1, 3 and 4 and the Arrelano-Bond estimator in model 2) that are also shown in table 4, but with interaction terms added. The dependent variable is either the logit transformation of the variable TURNOUT, ln[%TURNOUT/(100% - %TURNOUT), or TURNOUT] or the variable TURNOUT. Rho indicates the proportion of variance in the dependent variable that is attributable to the fixed effects (intraclass correlation). 'No effect' indicates that the result was not statistically significant at the 10% level.
† $p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

A.4. Analyses without German Companies

Table A.5 illustrates the fixed effects estimators for a sub-sample without the German companies. We can conclude that the results are generally similar to the tables reported in this chapter. One may note that the estimator for the variable 'SHAPLEYsmall' is statistically significant at the 1 and 5% level in the fixed effects models 3 and 4 for small shareholder turnout that are reported in this table. Also, the dummy variable for amendments to the articles of association now shows a statistically significant negative effect in models 1 (total shareholder turnout) and 3 (small shareholder turnout). To conclude, the findings that are reported in this model definitely do not contradict our conclusions in this chapter, but actually confirm them.

TABLE A.7

Panel Data Analysis Fixed Effects Cluster-Robust Estimator (Total and Small Shareholder Turnout, no German Companies)

	TURNOUTlog Fixed effects models		**TURNOUTsmall Fixed effects models**	
	Full fixed effects model	Reduced fixed effects model	Full fixed effects model	Reduced fixed effects model
	(1)	(2)	(4)	(5)
Ownership concentration				
Concentration1	No effect		No effect	
HHI	0.000374***	0.000384***	No effect	
	(0.0000949)	(0.0000648)		
BLOCK	No effect		-0.533***	-0.618***
			(0.0930)	(0.0971)
R12	No effect		No effect	
BANZHAFsmall	No effect		No effect	
BANZHAFlarge	No effect		-0.115†	-0.0988*
			(0.0673)	(0.0453)
SHAPLEYsmall	0.491**	0.662***	13.34*	14.60**
	(0.157)	(0.160)	(5.499)	(5.418)
Importance of the Meeting				
Elections	0.00723†	0.00852*	No effect	
	(0.00395)	(0.00398)		
Items	0.00390†	No effect	No effect	
	(0.00221)			
Rejections	No effect		No effect	No effect
Shareholders	No effect		No effect	No effect
Opposition	No effect		No effect	No effect
dDirector(re-)elect	No effect		No effect	
dRemunerationreport	0.284***	0.310***	10.34***	11.03***
	(0.0708)	(0.0728)	(2.209)	(2.237)
dSoPother	No effect		No effect	
dCapital	No effect		No effect	
dPreemption	No effect		No effect	
dDischarge	No effect		7.336*	7.488†
			(3.551)	(4.392)
dGM14days	-0.152†	-0.162†	-4. 83†	No effect
	(0.0828)	(0.0830)	(2.356)	
dAmendments	-0.0615**		-1.621*	

	(0.0223)		(0.699)	
dRPT	No effect		No effect	
Types of Shareholders				
dInsider	No effect		No effect	
dInstitutional	No effect		No effect	
dNonfinancial	No effect		No effect	
dGovernment	No effect		No effect	
%Insider	0.00826†	No effect	No effect	0.270†
	(0.00492)			(0.159)
%Institutional	0.00825**	0.00677*	0.161†	No effect
	(0.00304)	(0.00283)	(0.0956)	
%Nonfinancial	0.0228***	0.0221***	0.555**	0.564**
	(0.00543)	(0.00438)	(0.198)	(0.183)
%Government	0.0157*	0.0212**	No effect	No effect
	(0.00615)	(0.00732)		
Control Variables				
logSIZE	0.352***	0.191***	No effect	
	(0.0393)	(0.0430)		
logPI	No effect		No effect	
logRI	No effect		No effect	
Index	Omitted		Omitted	
Sector	Omitted		Omitted	
Other information				
_cons	-1.895***	-2.231***	9.968	37.78***
	(0.385)	(0.416)	(13.61)	(6.707)
N	1086	1088	1086	1094
R^2 *overall*	0.592	0.566	0.221	0.199
Rho	0.934	0.901	0.839	0.802

Note: the table reports fixed effects panel data regressions for Austria, Belgium, France, Netherlands, Ireland, and UK (Germany omitted). The dependent variable in model 1-2 is the logit transformation of total shareholder voter turnout TURNOUTlog, calculated as: ln[%TURNOUT/(100% - %TURNOUT)]. The dependent variable in models 3 and 4 is TURNOUTsmall. logRI is the natural logarithm the total return index, logPI the natural logarithm of the price index and logSIZE the natural logarithm of market value. Cluster-Robust standard errors are in parentheses.
†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

CHAPTER 4 - THE IMPACT OF THE SHAREHOLDER RIGHTS DIRECTIVE

ABSTRACT

In this part of the research we consider the costs of the turnout decision and evaluate whether the introduction of the Shareholder Rights Directive, which aimed at lowering voting costs, has had a positive impact on (small) shareholder attendance. For this, we investigate turnout rates in Belgium, France and the Netherlands. We find strong indications that the Shareholder Rights Directive indeed had a positive impact on (small) shareholder attendance in these countries. The findings of this study may encourage policy makers to further reduce the costs of (cross-border) voting. It shows that the introduction of the new Shareholder Rights Directive may contribute to (small) shareholder engagement.

1. INTRODUCTION

In the previous chapter, we considered factors that contribute to (small) shareholder turnout, i.e., the benefits of the voting decision. Shareholder turnout may be considered a low-cost-low-benefit decision that is made at the margin, however (analogy in political elections, see Aldrich, 1993, *cf. supra*, chapter 3). Hence, not only (small) changes in the benefits of voting, but also any changes in the costs voting may have a large impact on the turnout decision of shareholders.

In chapter 1, we discussed the European framework of shareholder rights. We have seen that with the introduction of the Shareholder Rights Directive (2007/36/EC) the EC hoped to enhance shareholder voting rates at (A)GMs[400] by, *inter alia*, lowering the voting costs for (cross-border) shareholders. The provisions introduced by the Directive include i) the introduction of a minimum notice period of 21 days (which can be reduced to 14 days), ii) the requirement to publish the convocation and documents to be submitted to the (A)GM at the company's website at least 21 days before the meeting takes place, iii) a ban on impediments to electronic participation, iv) easing the use of proxy holders, v) a ban on share blocking and the introduction of a record date of no more than 30 days before the meeting, and vi) the requirement to disclose the voting results on the company's website. If the Aldrich hypothesis is indeed applicable to shareholder voting, the introduction of the Shareholder Rights Directive may have increased turnout rates by reducing the costs of voting.

1.1. Outline of this Chapter

The aim of this chapter is to evaluate whether the introduction of the Shareholder Rights Directive (2007/36/EC) has had a positive impact on shareholder turnout rates in listed companies in Europe. In the next section we outline our hypothesis and explain our research method. Then, in section 3 we take a closer look at the impact of the introduction of the Shareholder Rights Directive on the national laws of the countries we are examining in order to see whether the introduction of

[400] For example, preambule 3 of the Directive states that 'holders of shares carrying voting rights should be able to exercise those rights given that they are reflected in the price that has to be paid at the acquisition of the shares. Furthermore, effective shareholder control is a prerequisite to sound corporate governance and should, therefore, be facilitated and encouraged. It is therefore necessary to adopt measures to approximate the laws of the Member States to this end. Obstacles which deter shareholders from voting, such as making the exercise of voting rights subject to the blocking of shares during a certain period before the general meeting, should be removed'.

the Shareholder Rights Directive may have indeed (substantially) lowered the costs of voting in these countries. Section 4 shows the regression results and section 5 covers robustness checks, including the justification of the parallel trend assumption. Finally, section 6 provides some concluding remarks and a discussion.

2. OUR HYPOTHESIS AND RESEARCH METHOD

2.1. Hypothesis

When we look at our empirical findings in chapter two (table 2), we see an increase in total shareholder turnout rates in the Netherlands from 2010 to 2011 of 6.1% that is substantially higher than in other years. Interestingly, in the Netherlands, the Shareholder Rights Directive was implemented through the *Wet ter implementatie van de richtlijn aandeelhoudersrechten*, which came into effect on July 1, 2010. The 2010 AGMs all took place in either March, April or May, and thus were not yet subject to the provisions in the Shareholder Rights Directive.[401] But the Netherlands is not the only country that experienced a clear jump in turnout rates; in Belgium, where the implementation act of the Shareholder Rights Directive came into force on January 1, 2012, total shareholder turnout from 2011 to 2012 increased by 8.6%. And, in France, where the provisions of the Directive went into effect on December 9, 2010,[402] we see an increase in turnout rates of 4.5% from 2010 to 2011. With respect to the small turnout rates of these three Member States, we observe the following: an increase of more than 11% from 2010 to 2011 in the Netherlands, an increase of more than 7% from 2010 to 2011 in France, and more than 14% in Belgium from 2011 to 2012 (*cf. supra*, table 4 of chapter 2).

There was thus a rise in (small) shareholder turnout rates in the Netherlands, Belgium and France after the implementation of the Shareholder Rights Directive. In order to see whether we can put a causal claim on this increase, we test the following hypothesis:

Hypothesis: the introduction of the Shareholder Rights Directive, aimed at lowering the cost of voting, has positively affected (small) shareholder turnout rates in the Netherlands, Belgium, and France.

In this chapter we evaluate whether the Shareholder Rights Directive increased (small) shareholder voter turnout in the Netherlands, Belgium, and France. Unfortunately, for the other countries in our sample (Austria, Germany, Ireland and the UK) we cannot see the effect of the Shareholder Rights Directive in our data, as these countries implemented the Shareholder Rights Directive prior to our 2010-2014 sample period.[403]

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401 Eumedion also reports a significant increase in the voter turnout rates. In their reports they show an average total shareholder turnout rate of 49.8% in 2010, 47.8% in 2009, and 49.2% in 2008 for AEX-25 companies. In contrast, in 2011, Eumedion reports an average turnout rate of around 59%. One must note that Eumedion does not take into account the voting rights of the trust offices in its reported turnout rates, which explains the difference between our reported numbers and theirs. Eumedion (2011).

402 '*Ordonnance n° 2010-1511 du 9 décembre 2010 portant transposition de la directive 2007/36/ CE du 11 juillet 2007 concernant l'exercice de certains droits des actionnaires de sociétés cotées*'.

403 In Austria, the Shareholder Rights Directive was implemented with the 2009 Stock Corporation Amendment Act (*Aktienrechts Änderungsgesetz*; AktRÄG) that went into force on 1 August, 2009. In Germany, the ARUG (*Entwurf eines Gesetzes zur Umsetzung der Aktionärsrechterichtlinie*) was adopted in German law on 3 August 2009. In Ireland, the Regulations implementing the Shareholders Rights Directive came into effect

2.2. Research Method

Due to the nature of our data and the available sample period, we decided to use a difference-in-differences estimation framework (hereinafter: d-i-d).[404] The d-i-d method compares observations from a treatment group with those from a control group before and after a particular 'treatment'. Hence, for a d-i-d estimation, we need to have i) a treatment at a particular moment; ii) treatment observations that are available *before* and *after* the treatment, and; iii) control observations that are available *before* and *after* the treatment. The d-i-d framework was used in the seminal work of Ashenfelter and Card (1985) and Card and Krueger (1994). Ashenfelter and Card (1985) estimated the effectiveness of training for participants in the 1976 CETA (Comprehensive Employment and Training Act) programs, by looking at trainee earnings. To do so, they used the group of trainees and a control group with the same age distribution as the trainees. The authors generally found a positive effect, but noted that the magnitude of the effect was sensitive to the participation model. Card and Krueger (1994) examined the effect of a minimum wage increase in New Jersey: on April 1, 1992, the minimum wage rose from 4.25 USD tot 5.05 USD per hour. To examine the effect, the authors evaluated 410 fast-food restaurants in New Jersey and Pennsylvania (control group) before and after the increase in minimum wage. Meyer, Viscusi and Durbin (1995) also studied the effects of workers' compensation on time out of work. The authors have a before and after period, where the treatment effect consists of a policy change that raised the weekly benefit amount. The treatment group consists of 'high earners', and the control group of 'low earners': these low earners were not affected by the increase in the weekly benefit. The authors conducted their analysis in both the state of Kentucky and the state of Michigan, and found a positive treatment effect in both states (although statistically insignificant for the state of Michigan).

The treatment, in our research, is the implementation of the Shareholder Rights Directive (2007/36/EC) in the Netherlands (2011), Belgium (2012) and France (2011). As we have seen, the Shareholder Rights Directive was implemented in the Netherlands in July 2010, shortly after the 2010 AGM season of the AEX-25 companies: all 2010 AGMs took place either in March, April or May, and thus where not yet subject to the provisions in the Shareholder Rights Directive. In Belgium, it was implemented with the act of 20 December, 2010, which came into force on January 1, 2012, prior to the 2012 AGM season. And in France, the Shareholder Rights Directive was fully implemented with the law of 9 December, 2010. France already adopted part of the Directive under Decree no. 2010-684 (23 June, 2010),[405] however. This decree focused particularly on shareholder information rights prior to the meeting, including the disclosure of relevant documents via the company's website, proxy voting forms, and rules regarding the notice of the meeting. Since these provisions applied to AGMs that were held on or after October 1, 2010, we removed Pernod Ricard SA, which held its 2010 AGM on 10 November, 2010, from our sample of CAC-40 companies. Thus, in our analyses the treatment observations are the AEX-25, the BEL-20, and the

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on 3 August, 2009. In the UK the Shareholder Rights Directive was implemented in August 2009 (The Companies (Shareholders' Rights) Regulations 2009 of 3 August, 2009). Since we only have data from the 2010 AGMs onwards, we cannot compare the turnout rates before and after the implementation of the Shareholder Rights Directive in these countries.

[404] For example, see Cameron and Trivedi (2005, p. 787). One may note that a weakness in our analyses is the short time period for which we have data available (*cf. infra*, section 5 of this chapter).

[405] '*Décret n° 2010-684 du 23 juin 2010 relatif aux droits des actionnaires de sociétés cotées*'.

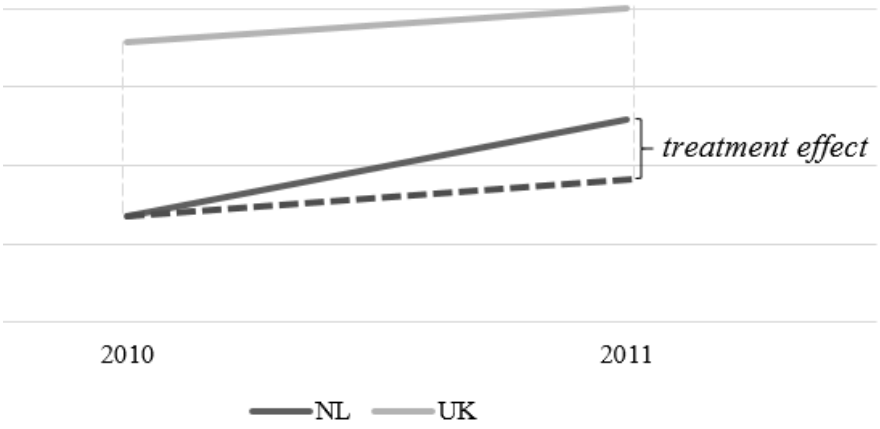
CAC-40 (excluding Pernod Ricard SA) companies from our sample that we have used in the previous chapters (*cf. supra*, appendix with chapter 2).

We compare the turnout rates for these aforementioned companies to the turnout rates for UK FTSE-100 companies in the same periods. The UK had already implemented the provisions of the shareholder Directive in the UK CA 2006 in August 2009, and, as we will see in the next section, the Shareholder Rights Directive did not have a significant impact on the costs of voting in the UK. This creates an opportunity to use the FTSE-100 as the control group in our d-i-d framework. However, one should note that in the standard d-i-d estimation framework, the outcomes at individual level are regressed on a certain policy that applies to all individuals in the treatment group, but not in the control group. In our case, the UK experienced the same treatment in 2009, i.e., the implementation of the Shareholder Rights Directive, but, as we will see in the next section, the regulatory changes were much less significant than in the other three countries.

The d-i-d estimator can be graphically shown in the following way with the AEX-25 companies as the treatment group (the displayed treatment group contains the AEX-25 companies, with the treatment year 2011):

FIGURE 1

d-i-d estimator (example NL & UK TURNOUT)



The d-i-d estimator controls for differences in levels between treatment and control group. The advantage of the d-i-d estimator (compared to a cross-sectional estimator) is that it allows for fixed effects (similar to the fixed effects panel data model). According to Bertrand, Duflo and Millainathan (2004), 'the great appeal of [d-i-d estimation] comes from its simplicity as well as its potential to circumvent many of the endogeneity problems that typically arise when making comparisons between heterogeneous individuals' (p. 250). However, as we can see in figure 1 already, the d-i-d estimator relies on the *parallel trend* or *common trend* assumption. This means that time trends need to be the same for both the treatment and the control group, which is a rather strong assumption. In section 5 we evaluate the validity of this assumption for our analysis.

We can summarize the d-i-d estimator in the following way, where δ is the treatment effect and γ indicates the treatment year: [406]

[406] The STATA-command that is used for these analyses is 'diff'. Besides the general d-i-d framework, this command also allows for matching. We can match the observations in the control and treatment group, so that these are (very) similar in every possible way, except for the treatment. Exact matching is not possible

TABLE 1

d-i-d estimator

	t	***t+1*** **(treatment year)**	**Difference**
Treated (Netherlands, Belgium, France)	$a + \beta$	$a + \beta + \gamma + \delta$	$\gamma + \delta$
Control (UK)	a	$a + \gamma$	γ
d-i-d (treatment effect)			δ

Before we turn to our estimation results (section 4), we first take a closer look at the impact of the Shareholder Rights Directive on the costs of voting at the national level of the countries of interest. As we will see, the Shareholder Rights Directive had a substantial impact on the procedural rules in the Netherlands, France and Belgium, but less in the UK.

3. IMPLEMENTATION OF THE DIRECTIVE AT THE NATIONAL LEVEL

In this section we evaluate the amendments to the national laws of the Netherlands, Belgium, France, and the UK as a result of the introduction of the Shareholder Rights Directive. In order to conduct a clear comparative analysis, we evaluate the amendments below.[407]

3.1. Information Prior to the AGM

Article 5 of the Shareholder Rights Directive comprises two main rules: i) the minimum notice period is at least 21 days,[408] and; ii) requirements for the information that needs to be published by the company prior to the meeting, including the notification of the meeting. The notice of the meeting must:

> (a) indicate precisely *when and where* the general meeting is to take place, and the proposed *agenda* for the general meeting; (b) contain a clear and precise description of the procedures that shareholders must comply with in order to be able *to participate and to cast their vote* in the general meeting. This includes information concerning: (i) the *rights available to shareholders under Article 6* [right to put items on the agenda of the general meeting and to table draft resolutions], to the extent that those rights can be exercised after the issuing of the convocation, *and under Article 9*

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as the companies in the treatment group (either the Netherlands or Belgium) are not (entirely) the same as the companies in the control group (UK). In other words, when we want to match company i with characteristics X_i with a company in the control group, this company also needs to have exactly the same characteristics $X_i = X_j$. Although exact matching is not possible, we can match on the closeness of our observations: the d-i-d estimator can easily be combined with Kernel matching. Briefly, kernel matching uses control group observations and determines their weights in accordance with their closeness using a kernel weighting function (for instance, $\widetilde{w}_{ij} = \frac{K(||X_i - X_j||)}{\sum_{l|D=0} K(||X_i - X_l||)}$, where $\widetilde{w}_{ij}$ is the weighting function, X_i the characteristics of company i (in our case, either an AEX-25 or BEL-20 company) and X_j the characteristics of company j in the control group). We report the results for the kernel matching d-i-d estimation in the appendix of this chapter. However, it is important to note that due to our (very) limited sample sizes, the matching of observations may be quite far from close.

[407] For further analyses of the impact of the provisions in the Shareholder Rights Directive in the different Member States, one may for example refer to Zetzsche (2008). See also Hopt (2015).

[408] Except for a general meeting that is not an AGM, if shareholder approval for shortening this period is obtained and the possibility to vote by electronic means is offered pursuant to article 5(1) second paragraph of the Directive.

[right to ask questions], and *the deadlines by which those rights* may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company; (ii) the procedure for *voting by proxy*, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and (iii) where applicable, *the procedures for casting votes by correspondence or by electronic means*; (c) where applicable, state the *record date* as defined in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting; (d) indicate where and how *the full, unabridged text of the documents and draft resolutions* referred to in points (c) and (d) of paragraph 4 may be obtained; (e) *indicate the address of the Internet site* on which the information referred to in paragraph 4 will be made available. (emphasis added by the author).

In addition to these requirements, article 5(4) stipulates that the following information to be made available on the company website: i) the notice of the meeting, ii) the total number of shares and voting rights at the day of the convocation, iii) the documents to be submitted to the general meeting, iv) a draft resolution (or, where no resolution is proposed a comment from the competent body) for each item on the proposed agenda, including draft resolutions tabled by shareholders (as soon as practicable after the company has received them), and iv) the forms to be used to vote by proxy and by correspondence.

The notice period was increased in all four Member States: in Belgium, article 533 WvV was introduced to increase the minimum notice period to 30 days. In France, article R225-73 of the Decree increased the minimum notice period to 35 days (or 15 days if the meeting is convened in accordance with article L.233-32 FCC). In the Netherlands, the minimum notice period became 42 days for listed companies ex article 2:115(2) DCC (and article 5:25ka Wft). In the UK the minimum notice period was increased to 21 days for EGMs, ex section 307A CA 2006. However, this section still makes it possible to call an EGM with a notice period of at least 14 days.[409] Before the implementation of the Shareholder Rights Directive, the notice period for AGMs was already 21 days in the UK.[410]

Table A.8 in the appendix to this chapter provides an overview of the national laws regarding the information that needs to published prior to the AGM that were amended. All Member States closely followed the Directive when implementing the new provisions. In the UK, the option of publishing the notice of the meeting and the documents related to the meeting on the company's website was already adopted under UK law (without requirement).

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[409] Such a proceeding requires a special resolution passed at the preceding (annual) general meeting (see also chapter 1 and 2 of this research). Another requirement mandates that the company offers all shareholders the option of voting by electronic means.

[410] *Cf. supra*, see table 2 of chapter 1 for an overview of the minimum notice period and record date in the seven Member States. Strikingly, though the minimum notice period and the record date are regulated in the Shareholder Rights Directive under a minimum harmonization requirement, it does not have a harmonizing effect in practice. In our opinion, there is no real economic explanation for these different approaches, unless the disclosure requirements are more demanding in France and the Netherlands than in the UK, which would be why these countries require companies to provide longer notification periods – which is, to our knowledge, certainly not the case.

3.2. The Right to Put Items on the Agenda and to Table Draft Resolutions

Article 6 of the Shareholder Rights Directive stipulates that shareholders have the right to place items on the agenda of the general meeting and to table draft resolutions. The minimum threshold for these rights may not exceed 5% of the share capital (*cf. supra*, chapter 1, section 2.1.2).

With the introduction of the Shareholder Rights Directive, some changes were made to national laws. In Belgium, the right to put items on the agenda was implemented in article 533ter WvV with the requirement that shareholder(s) need to have a minimum capital stake of 3%. In the Netherlands, nowadays, a shareholder proposal cannot be refused on the grounds of substantial company interests. This exclusion was removed from article 2:114a DCC, in accordance with the Shareholder Rights Directive. In France, article L.225-105 FCC now allows shareholders to request the inclusion of an item on the agenda of the general meeting; before the implementation, shareholders only had the opportunity to require the inclusion of draft resolutions. Regulation 4 of the UK Companies Regulations 2009 requires a minimum 5% capital stake to call a meeting (implemented in section 303 CA 2006). Sections 338A, 340A and 240B of the UK CA 2006 were inserted to empower shareholders to require the inclusion of other matters (i.e., other than a proposed resolution).

3.3. Requirements for Participation and Voting

Article 7(1)(a) of the Shareholder Rights Directive bans the obligation to deposit shares for a few days before the GM to be able to vote. The second paragraph of this article requires a record date of maximum 30 days. In Belgium, the law of 20 December 2010 also adds a second paragraph to article 536 WvV obliging listed companies to use a record date: share blocking is now prohibited in accordance with the Directive. The registration date is limited to 14 days before the meeting. The Dutch legislature (eventually) decided to implement a record date of no more than 28 days before the AGM ex article 2:119 DCC. Share blocking was also allowed under Dutch law before the implementation of the Shareholder Rights Directive (former article 2:117(3) DCC).[411] In France, the record date system had already been implemented in 2007, which have been set to three business days before the general meeting. In the UK, the share blocking prohibition was implemented in section 360B(1), but this was just a formal requirement as share blocking was not used in the UK prior to the implementation of the Shareholder Rights Directive. The use of a record date not later than 48 hours before the meeting, as delineated in new section 360B(2) was already in keeping with UK practice before the implementation of the Shareholder Rights Directive (EC, 2006, Impact Assessment, p. 215).

3.4. Participation by Electronic Means

As we have seen in chapter 1, article 8(1) of the Shareholder Rights Directive stipulates that Member States shall permit companies to offer their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation: (a) real-time transmission of the general meeting; (b) real-time two-way communication enabling shareholders to address the general meeting from a remote location; (c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder

411 However, a record date system was already included in the DCGC 2008 in best practice IV.1.7: '*De vennootschap bepaalt een registratiedatum voor de uitoefening van stem- en vergaderrechten*'.

who is physically present at the meeting. Paragraph 2 of article 8 adds that electronic participation may only be made subject to requirements when those are necessary to ensure the identification of shareholders and the security of electronic participation. This paragraph also adds that these requirements be proportionate to their purposes.

In many Member States participation by electronic means was already possible (at least to some extent) before the introduction of the Shareholder Rights Directive. In the Netherlands participation by electronic means was introduced with the law of January 2007, *Wet elektronische communicatiemiddelen*, in articles 2:117a DCC and 2:117b DCC (*cf. supra*, chapter 1). Article 2:117a(3) DCC was amended with the implementation of the Directive, in order to avoid unreasonable restrictions to the use of electronic means for participation (shareholder identification). In France, it was also already allowed to allow video conferencing at the AGM in the articles prior to the introduction of the Shareholder Rights Directive ex article L.225-107(II) FCC. In the UK, the electronic participation option was already introduced with the CA 2006 (and amendments that came into effect on October 1, 2007). These provisions include the use of electronic communication and electronic proxy voting.

In contrast, in Belgium, article 538bis WvV was introduced to allow for electronic participation. It stipulates that the possibility to electronically participate must be adopted in the articles of association, which requires a qualified majority. Article 538bis WvV states that shareholders that remotely participate are considered to be attending the meeting and are thus included in turnout rates.

3.5. The Right to Ask Questions

Article 9 of the Shareholder Rights Directive grants shareholders the right to ask questions. Paragraph 1 states that 'every shareholder shall have the right to ask questions *related to items on the agenda of the general meeting*. The company shall answer the questions put to it by shareholders' (emphasis added by the author). In accordance with the preamble, this paragraph thus limits the right to ask questions to the items on the agenda of the (A)GM. Paragraph 2 of this article includes some other potential restrictions as well: Member States are allowed to take measures, or can allow companies to take measures to ensure shareholder identification, the good order of general meetings and their preparation and protection of confidentiality and companies business interests. Member States may also allow companies to provide one overall answer to questions with the same content. Lastly, Member States may also determine a question answered if the relevant information is available on the company's website in a 'question and answer' format.

In France, article L.225-108 FCC includes the right to ask written questions. That one response can be given to questions that have the same content, and that an answer to a written question is deemed to be given where it appears on the website in a Q&A section was added later. In Belgium, the right to ask questions was already provided before the implementation of the Shareholder Rights Directive, but was amended: the right to submit questions in writing before the meeting was added to article 540 WvV as was the right to provide one overall answer to questions with the same content (article 540 WvV).

In the UK, answering questions from shareholders was already common practice before the introduction of the Shareholder Rights Directive. The new section 319A CA 2006 was implemented in order to formally fulfil the requirements of the Shareholder Rights Directive. As we have seen in chapter 1, no amendments have been made under Dutch law.

3.6. Proxy Voting

Article 10 and 11 of the Shareholder Rights Directive enable shareholders to appoint a proxy holder to attend the AGM (or other general meeting) in person or by electronic means. This proxy holder, who votes in the shareholder's name, can be a natural person or a legal person. This person not only votes, but also enjoys the same rights as the shareholder such as the right to ask questions (discussed below) and engage in discussions.

Prior to the implementation of the Shareholder Rights Directive in France, shareholders were only allowed to be represented by another shareholder or by spouse in accordance with article L.225-106 FCC: following the adoption of the Directive, shareholders of listed companies can also be represented by any other natural or legal person of their choice. Article R225-79 FCC stipulates the use of electronic proxy voting. Articles L.225-106-1, L.225-106-2, and L.225-106-3, which contain additional (disclosure) requirements regarding proxy voting, were also added to the FCC. In Belgium, article 547bis WvV regarding proxy voting was inserted.

In the Netherlands, article 2:117(6) DCC was amended to require companies to recognize proxies submitted electronically. And in the UK, electronic proxy voting had already allowed been allowed ex section 333(2) CA 2006 since January 2007. This section stipulates that where a company has given an electronic address (either in an instrument of proxy sent out by the company in relation to the meeting, or in an invitation to appoint a proxy issued by the company in relation to the meeting) it is considered to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice). With the implementation of the Shareholder Rights Directive, section 360A CA 2006 was added states that companies may conduct 'a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it' (paragraph 1). New section 322A CA 2006 was introduced to allow companies to enable advance voting on a poll in their articles of association.

3.7. Publication of Voting Results

The last provision of the Shareholder Rights Directive that we consider is the requirement to publish the voting results on the company's website. This provision was implemented in article 546 WvV in Belgium and in article 2:120 DCC and 5:25ka(3) Wft in the Netherlands. In France, where it was implemented in article R225-106-1 of the Decree, the publication of the voting results was already common practice before the implementation of the Directive. In the UK, section 341 CA 2006 was amended. Before the implementation of the Shareholder Rights Directive, quoted companies already had to disclose the results of all polls carried out in the general meetings (not required for resolutions passed by a show of hands).

3.8. Impact on the National Level

The analysis above provides us with the following observations. The Shareholder Rights Directive had (some) impact on the disclosure of information prior to the meeting in all four Member States. The main amendments to Belgian law include: i) the prohibition of share blocking and the use of a mandatory record date system; ii) the possibility to make use of electronic means; iii) new rules on proxy voting, and iv) the publication of the voting results. In the Netherlands, the use of share

blocking was also prohibited. In addition, the legislature amended article 117(6) DCC regarding the use of electronic proxy voting. The voting result publication requirement was introduced as well. In France, the scope of proxy voting was broadened in particular. Belgium, France and the Netherlands increased the minimum notice period: in the UK, the notice period for general meetings (not AGMs) was increased. It seems that the introduction of the Shareholder Rights Directive in the UK only led to minor changes or the adoption of formal provisions under the CA 2006 concerning matters that were already common practice (for instance, the right to ask questions). Although the changes to the laws of the Member States are not entirely comparable, we tend to conclude that the implementation of the Shareholder Rights Directive has led to the largest changes under Belgian national law and has had the lowest impact on UK national laws. Our findings indicate that the Directive had (far) more impact on the national laws in France and the Netherlands than in the UK, but somewhat less than in Belgium.

4. ANALYSES

In this section we show the results of the d-i-d estimation. In order to obtain more precise estimates and to control for different trends in the characteristics of our observations, we also include the relevant covariates (*cf. supra*, chapter 3, explained in table 3 and reported in the analyses in table 4 and 5).[412] The analyses are shown in table 2. However, before we discuss our findings, it is important to note that our sample is somewhat restricted: we only have 17 Belgian companies and 24 Dutch companies, which means that each observation has significant impact on the results, and accordingly, one needs to evaluate the results with some caution. The kernel matching d-i-d estimates are reported in the appendix to this chapter. These estimators show results that are similar to table 2.

The results in table 2 show that the treatment effect is statistically significant at the 1% level in the Netherlands for total shareholder turnout and at the 0.1% level for small shareholder turnout. The treatment effect for total shareholder turnout rates is around 6%, for small shareholder turnout this is 9%. For Belgium the treatment effect is statistically significant at the 0.1% level in both models. The magnitude is larger than for the Dutch companies: 7% for total shareholder turnout and even around 12% for small shareholder turnout rates. Yet we must take into account that a shareholder's say on the remuneration report was added in the form of the Law of 6 April 2010, namely the *Wet tot versterking van het deugdelijk bestuur bij de genoteerde vennootschappen en de autonome overheidsbedrijven en tot wijziging van de regeling inzake het beroepsverbod in de bank- en financiële sector* (implemented in article 554 WvV). This law came into force on 3 May 2010. Of 17 Belgian companies in our sample, only one company allowed a shareholders' say on the remuneration report in 2010 (AB Inbev NV). In 2011, this number increased to five companies, and in 2012, sixteen of the seventeen companies put the remuneration report to a vote. One may recall from the previous chapter that the remuneration report as a voting item strongly contributes to (small) shareholder turnout. Hence, it is possible that (part of) the treatment effects that are reported in table 2 for Belgian companies are caused by the adoption of shareholders' say on pay. When controlling for the remuneration report by adding the dummy to the analyses, we find a statistically significant treatment effect of 5.5% for total shareholder turnout and of 8.2% for small shareholder

[412] We did not include the dummy for the remuneration report for the analyses with the Dutch and French companies, as these companies generally do not put this voting item on the agenda (*cf. supra*, chapter 1 of this research).

turnout (both statistically significant at the 10% level).[413] One may note that these analyses show that a voting item concerning the remuneration report, which contributes to the importance of the meeting, i.e., the benefits side of the turnout decision, has a strong effect on total and small shareholder turnout. As such, our analyses confirm the conclusions of chapter 3.

Table 2 further shows a treatment effect for total shareholder turnout of around 3% (statistically significant at the 5% level) and an effect of around 4% for small shareholder turnout rates (also statistically significant at the 5% level) for the French companies in our sample. [414]

[413] Kernel matching d-i-d analyses (not reported) also provide statistically significant positive treatment effects (in both analyses at the 0.1% significance level).

[414] Since our sample sizes are small, we also reported the d-i-d estimators without including all covariates. One may refer to the appendix, table A.3.

TABLE 2

d-i-d estimation AEX-25 and FTSE-100 (2010-2011) & BEL-20 and FTSE-100 (2011-2012) & CAC-40 and FTSE-100 (2010-2011)

	AEX-25 (2010-2011)			**BEL-20 (2011-2012)**			**CAC-40 (2010-2011)**	
Outcome variable	TURNOUT	TURNOUT Small	TURNOUT	TURNOUT	TURNOUT small	TURNOUT small	TURNOUT	TURNOUT small
Covariates	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE, dRemunerationreport*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government, dRemunerationreport*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*
d-i-d with covariates								
Baseline								
Control	71.317	68.073	85.796	83.870	68.571	63.488	71.364	71.402
Treated	57.301	48.204	50.418	50.111	15.190	13.647	63.919	59.172
Difference	-14.016***	-19.869***	-35.378***	-33.758***	-53.381***	-49.841***	-7.444***	-12.230***
	(2.844)	(4.017)	(3.119)	(4.585)	(3.054)	(4.817)	(1.593)	(1.803)
Follow-up								
Control	72.641	70.699	87.618	85.662	71.122	65.991	73.512	74.925
Treated	64.380	59.735	59.282	57.365	29.495	24.362	68.940	66.420
Difference	-8.261**	-10.964**	-28.336***	-28.297***	-41.628***	-41.629***	-4.572***	-8.505***
	(2.887)	(3.980)	(3.556)	(3.597)	(3.886)	(3.962)	(1.692)	(1.969)
d-i-d (δ)	**5.755****	**8.906****	**7.042*****	**5.461†**	**11.753*****	**8.212†**	**2.873***	**3.725***
	(1.835)	**(2.840)**	**(1.492)**	**(3.066)**	**(3.182)**	(4.928)	**(1.152)**	**(1.784)**
R^2	0.49	0.29	0.66	0.66	0.77	0.78	0.48	0.30
N control:	200	202	201	200	202	202	200	202
N treated:	45	48	34	34	34	34	72	72

Note: d-i-d estimator using the STATA-command 'diff'. Treatment group are either the AEX-25 companies, the BEL-20 companies or the CAC-40 companies; control group are the FTSE-100 companies. Year of treatment is either 2011 (AEX-25 and CAC-40) or 2012 (BEL-20). Cluster-robust standard errors are in parentheses. Note that when using normal standard errors, the standard errors are different: in this case, the treatment effects for the treatment group CAC-40 are not statistically significant anymore. For the AEX-25 companies, the treatment effect remains statistically significant at the 5% level for total and small shareholder turnout. For the BEL-20 companies, all treatment effects remain statistically significant at the 5% level, except for the treatment effect for TURNOUT with the covariate dRemunerationreport included. †$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Although the results above would seem to indicate that the Shareholder Rights Directive indeed had a positive impact on turnout rates in Belgium and the Netherlands, we have to be careful in drawing conclusions. Our sample sizes, as a result of the nature of our data, are very small and companies may not be entirely comparable, which may bias our results. In addition, the results of our d-i-d analyses for France are not statistically significant once we use normal standard errors. For the Netherlands and Belgium, the results remain statistically significant at the 5% level (when we do not control for the remuneration report[415]). Due to the large differences between these standard errors, the estimation results that are reported in table 2 should be read with some caution (see also Bertrand, Duflo and Mullainathan, 2004; Donald and Lang, 2007). Nonetheless, our analyses provide at least some indications that the Shareholder Rights Directive indeed stimulated (small) shareholder participation.

In addition to the considerations above, one also needs to take into account that the d-i-d estimator uses a very strong assumption: the parallel or common trend assumption. In the next section we evaluate this assumption and conduct placebo analyses to demonstrate (at least to some extent) the robustness of our results.

5. ROBUSTNESS CHECKS

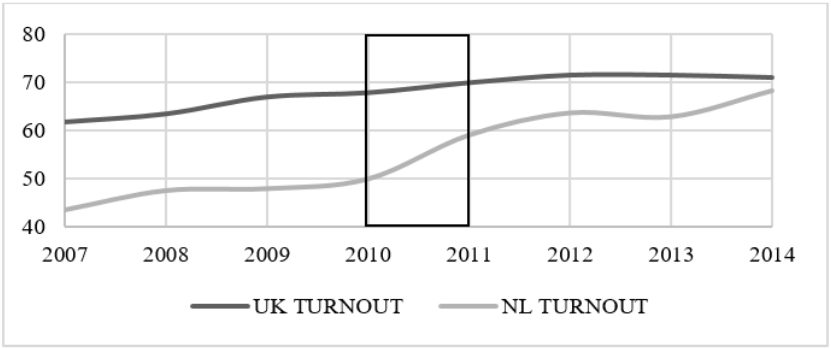
5.1. Common Trend Assumption

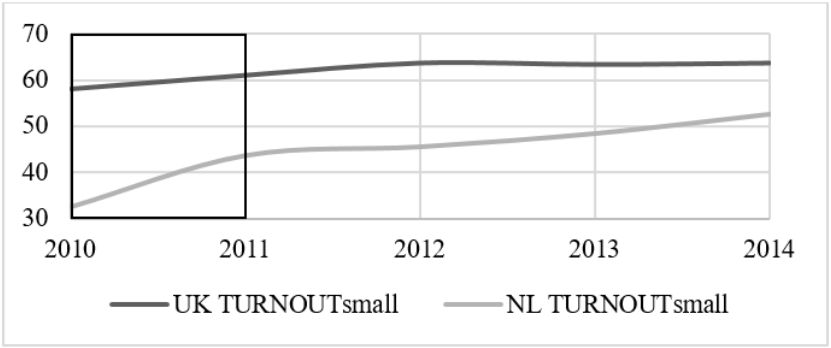
In section 3 we have seen that the d-i-d estimator assumes a common trend, or a parallel path *prior* to the treatment. This means that average changes in output among those treated if untreated are equal to the observed changes among comparable controls (Mora and Regggio, 2014, p. 5) Testing the common trend assumption is difficult in our research. In order to see whether a common trend assumption may be a valid assumption we make use of external data sources beyond the time period our research covers (2010-2014). We use average total voter turnout data from the yearly reports from Eumedion for the Netherlands, and turnout data from Van der Elst for the years 2007 to 2012 for total turnout rates in Belgium, France and the UK (an overview of the companies that are included in the sample is provided in the appendix to this chapter) and the average turnout rates reported in the 2012 AGM report of Eumedion for the same period for the Netherlands. Figure 2 shows the comparison in turnout trend for the Netherlands and the UK:

[415] When we add the remuneration report dummy the results for the Belgian sample become statistically insignificant.

FIGURE 2

TURNOUT[a] & TURNOUTsmall (%) AEX-25 and FTSE-100 compared





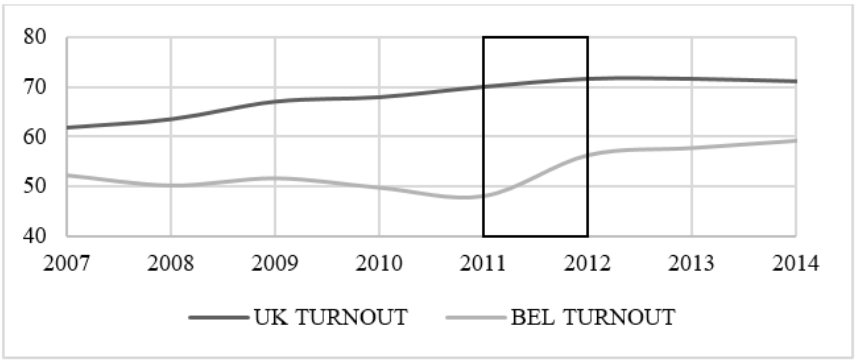
[a] 2007-2009 UK TURNOUT data from Van der Elst. Table A.3 in the Appendix of this chapter provides an overview of the companies included in this sample. Average Dutch TURNOUT data is retrieved from Eumedion (2013), *AvA evaluatie* (<http://www.eumedion.nl/nl/public/kennisbank/ava-evaluaties/2013_ava-evaluatie.pdf>). (accessed in January 2016).

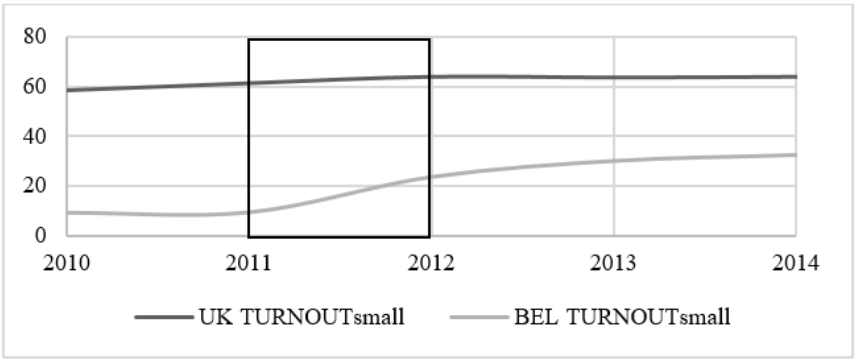
As we can see from figure 2, Eumedion also reports a significant increase in the voter turnout rates for AEX-25 companies in 2011. In their reports they show an average total shareholder turnout rate of 49.8% in 2010, 47.8% in 2009, and 49.2% in 2008 for AEX-25 companies. In contrast, in 2011, Eumedion reports an average turnout rate of around 59%. One must note that Eumedion does not take into account the voting rights of the trust offices in their reported turnout rates, which explains the difference between our reported numbers (*cf. supra*, chapter 2) and theirs. With respect to the common trend assumption we can see that between 2007 and 2010 the trend is not entirely parallel, though quite similar. However, from 2010 to 2011 the average voter turnout rate for AEX-companies increased substantially, whereas the trend for the UK remained more or less the same. Although we admit that this figure provides by no means foolproof evidence that the parallel trend assumption holds in this context, it nevertheless suggests that it *might* hold. Figure 2 also shows the trend of small voter turnout for the AEX-25 and the FTSE-100 companies. Unfortunately, our sample (which is also used in chapter 2 and 3) only contains data for the period 2010-2014. As a result, we cannot conclude from this figure that the parallel trend assumption holds. Nonetheless, one should note that in the 2010-2011 period small shareholder turnout rate increased more in the Netherlands than in the UK, and also more than in subsequent periods.

Figure 3 shows the comparison in total and small shareholder turnout trends for Belgium and the UK.

FIGURE 3

TURNOUT[a] & TURNOUTsmall (%) BEL-20 and FTSE-100 compared





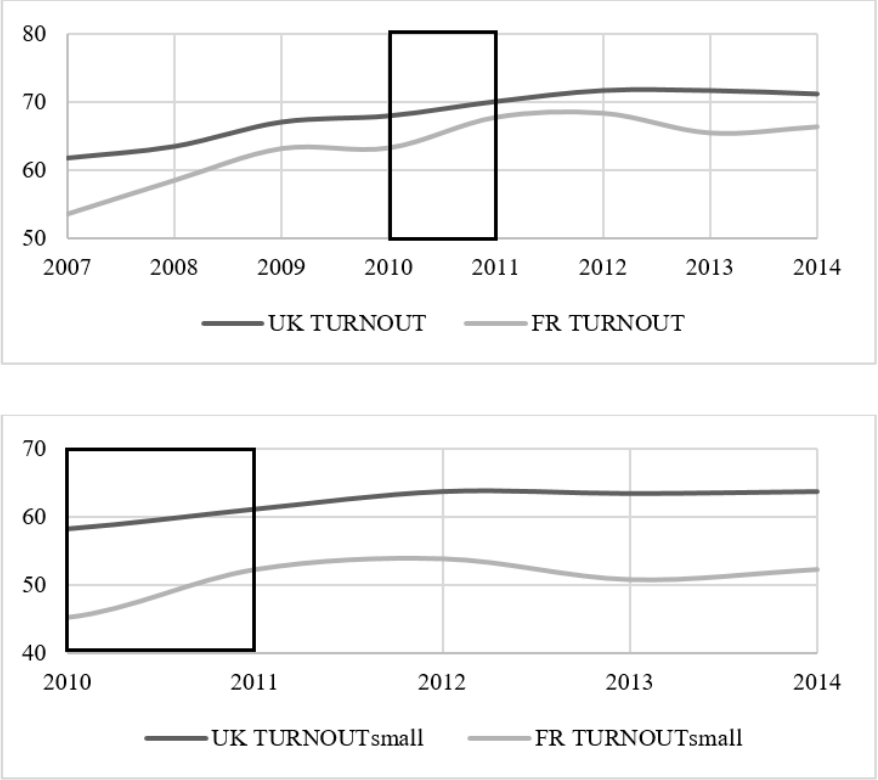
[a] 2007-2009 UK and 2007-2009 Belgian TURNOUT data from Van der Elst (2011). Tables A.3 and A.4 in the Appendix of this chapter shows an overview of the companies included in this sample.

From these figures we cannot entirely confirm that the BEL-20 and FTSE-100 companies follow the same trend, but we do observe a strong jump from 2011 to 2012 for BEL-20 companies in both total shareholder and small shareholder turnout rates, which is not present for the FTSE-100 companies. Moreover, turnout rates in Belgium before the 2011-2012 period were even falling.

Figure 4 compares total and small shareholder turnout trends for France and the UK. The TURNOUT trends in the periods before the 2010-2011 period are more or less the same for both countries. During the 2010-2011 period we can see a jump in the average total shareholder turnout rate for the CAC-40 companies, which does not manifest for the FTSE-100 companies. Figure 4 displays a sharper increase in small turnout rates for France than for the UK, which we did not observe for other periods. Like before, however, we cannot confirm the parallel trend assumption due to a lack of data prior to the treatment period.

FIGURE 4

TURNOUT[a] & TURNOUTsmall (%) CAC-40 and FTSE-100 compared



[a] 2007-2009 UK and 2007-2009 French TURNOUT data from Van der Elst. Tables A.3 and A.5 in the Appendix of this chapter shows an overview of the companies included in this sample.

Although the analyses of figures 2-4 certainly did not reject the parallel trend assumption, they did not (entirely) confirm this assumption either. In the next section we will use additional robustness tests often used in d-i-d estimations: placebo analyses.[416]

5.2. PLACEBO ANALYSES

For placebo analyses, a pre-treatment period must be tested, but unfortunately our initial sample for the Netherlands and France does not allow for this. With the data used for figures 2-4 (previous section) we conduct placebo analyses for total shareholder turnout for the period 2009-2010 (placebo-treatment year 2010): the results are displayed in the appendix to this chapter (table A.7). For the analyses that are reported below (table 3), we use the 2011-2012 period with placebo-treatment year 2012 for these two countries. For Belgium we use the 2010-2011 period (placebo-treatment year 2011). The results are shown in table 3. From the table we can conclude that (most of) these placebo d-i-d estimators are highly insignificant and hence, these placebo treatment effects do not exist. One may also note that also the placebo analyses that are reported in the appendix show statistically insignificant treatment effects.

[416] For example, Card and Krueger (1994), who examined the effect of a minimum wage increase in New Jersey, also used a placebo test. However, since these authors did not have any data available for earlier years, they performed a placebo analysis using unemployment data of more expensive (higher-class) restaurants to calculate the d-i-d estimator.

The rather small and/or insignificant treatment effects reported in both tables (which indicate that we cannot confirm that the treatment effect is different from zero) provide additional evidence that the parallel trend assumption may hold.

TABLE 3

D-i-D placebo estimation AEX-25 and FTSE-100 (2011-2012) & BEL-20 and FTSE-100 (2010-2011)[417] *& CAC-40 and FTSE-100 (2011-2012)*

	AEX-25 placebo (2011-2012)		**BEL-20 placebo (2010-2011)**		**CAC-40 placebo (2011-2012)**	
Outcome variable	TURNOUT	TURNOUT small	TURNOUT	TURNOUT Small	TURNOUT	TURNOUT small
Covariates	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*
d-i-d with covariates						
Baseline						
Control	68.201	50.679	85.716	76.025	66.892	62.670
Treated	58.927	38.787	54.341	27.902	62.552	53.424
Difference	-9.275***	-11.892**	-31.376***	-48.123	-4.340*	-9.246***
	(2.856)	(3.439)	(3.530)	(2.759)	(1.768)	(2.194)
Follow-up						
Control	69.981	53.386	88.159	79.927	68.606	65.302
Treated	61.374	39.628	53.243	27.033	63.106	54.986
Difference	-8.607**	-13.758**	-34.916***	-52.893***	-5.500**	-10.317***
	(2.920)	(3.072)	(2.953)	(2.582)	(1.884)	(2.443)
d-i-d (δ)	**0.667**	**-1.866**	**-3.540**	**-4.771†**	**-1.160**	**-1.071**
	(1.044)	**(2.060)**	**(2.400)**	**(2.695)**	**(0.896)**	**(1.508)**
R^2	0.45	0.26	0.66	0.77	0.45	0.25
N control:	201	202	200	202	201	202
N treated:	47	48	33	33	72	72

Note: Placebo d-i-d estimator using the STATA-command 'diff'. Treatment group are either the AEX-25 companies, BEL-20 companies or the CAC-40 companies; control group are the FTSE-100 companies. Year of placebo-treatment is either 2011 (BEL-20) or 2012 (AEX-25, CAC-40). Cluster-robust standard errors are in parentheses. †$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

[417] When controlling for the remuneration report, the placebo-estimation for the BEL-20 companies shows similar results for TURNOUT and TURNOUTsmall.

6. Conclusions and Discussion

6.1. Conclusions

In the previous chapter we established that the benefits of turnout positively contribute to the (small) shareholder's turnout decision. The aim of this chapter was to test the costs of the turnout decision, namely, whether lowering shareholder voting costs would contribute to higher voter turnout rates. We investigated whether the hypothesis that the introduction of the Shareholder Rights Directive (2007/36/EC) has positively affected (small) shareholder turnout rates in the Netherlands, Belgium, and France, holds. For this we used a d-i-d framework, and compared the (small) shareholder turnout rates of these aforementioned countries with those of UK companies. Our results tend to confirm our hypothesis: we found a positive treatment effect on total shareholder turnout rates of around 6% in the Netherlands, 5% in Belgium, and around 3% for France. For small shareholder turnout rates, the positive treatment effect is around 9% in the Netherlands, around 8% in Belgium, and 4% in France. Additional d-i-d analyses with less covariates and kernel matching d-i-d analyses show very similar treatment effects (reported in the appendix to this chapter). Nevertheless, it is important to recognize the limitations of these analyses, and we strongly suggest this research to be considered as a first step. For instance, our sample sizes are, especially for the Netherlands and Belgium, very small. Repeating the d-i-d analyses with a larger dataset – and more pre-treatment periods – is certainly recommended for future endeavours. In addition, we were only able to test the impact of the Shareholder Rights Directive in three Member States. Still our analyses seem to show consistent results. We conclude that this research at the very least provides some strong indications that lowering the costs of voting indeed has a positive impact on shareholder turnout rates.

6.2. Discussion and Policy Implications

This research suggests that lowering shareholder voting costs positively contributes to turnout rates. The EC has proposed amendments to the Shareholder Rights Directive that were formally adopted (in an amended version) in March 2017. Some of these amendments aim to lower the costs of cross-border voting. In the explanatory memorandum accompanying the proposal, the EC argues that cross-border shareholders in particular (still) experience difficulties exercising their shareholder rights as a result of intermediaries (also see Zetzsche, 2008; Davies et al., 2011). The findings of our research suggest that these amendments are indeed desirable. An interesting avenue for future research is the possible effect of the national implementation of this new Shareholder Rights Directive on turnout rates in a couple of years.

We measured a lower treatment effect in France than in the Netherland and Belgium. Before the implementation of the Shareholder Rights Directive, (small) shareholder voter turnout was larger in France than in the Netherlands and Belgium: 63.2% compared to 56.8% and 45.8% respectively for total shareholder turnout, and 45.2% compared to 32.5% and 9.5% respectively for small shareholder turnout. It may be the case that, since the turnout decision is made at the margin, the higher turnout rates are, the more difficult it is to increase those rates even further. It is likely that part of the shareholder base will (generally) never attend (for instance, because voting costs can be very small, but never zero, and hence, shareholders need to see at least some benefits

to participate), and thus turnout rates will probably never reach 100%. However, as long as voting costs can be reduced, (small) shareholder turnout may be increased at the margin.

APPENDIX CHAPTER 4

A.1. Kernel Matching d-i-d Estimates

TABLE A.1

Kernel Matching d-i-d estimation AEX-25 and FTSE-100 (2010-2011), CAC-40 and FTSE-100 (2010-2011), & BEL-20 and FTSE-100 (2011-2012)

	AEX-25 (2010-2011)		**BEL-20 (2011-2012)**		**CAC-40 (2010-2011)**	
Outcome variable	TURNOUT	TURNOUTsmall	TURNOUT	TURNOUTsmall	TURNOUT	TURNOUTsmall
Covariates	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, Banzhaflarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*	*HHI, SHAPLEYsmall, Elections, %Nonfinancial, %Government, SIZE*	*BLOCK, BANZHAFlarge, SHAPLEYsmall, Elections, %Nonfinancial, %Government*
Kernel propensity score matching d-i-d						
Baseline						
Control	73.848	57.866	75.781	62.660	70.435	57.041
Treated	56.831	37.675	45.781	9.474	62.905	44.854
Difference	-17.017***	-20.191***	-29.945***	-53.186***	-7.530	-12.187***
	(4.663)	(4.665)	(4.314)	(1.928)	(2.858)	(2.302)
Follow-up						
Control	75.063	62.017	77.115	64.139	71.955	60.139
Treated	62.933	49.305	54.396	23.710	67.499	51.961
Difference	-12.130**	-12.712***	-22.719***	-40.429***	-4.456†	-8.178***
	(4.072)	(3.453)	(4.818)	(3.127)	(2.553)	(2.215)
d-i-d (δ)	**4.887****	**7.479***	**7.226*****	**12.757*****	**3.074****	**4.009***
	(1.603)	(3.600)	(4.818)	(3.233)	(1.001)	(1.779)
R^2	0.20	0.29	0.55	0.90	0.09	0.22
N control:	184	192	199	201	200	202
N treated:	48	48	34	34	72	72

Note: d-i-d estimator using the STATA-command 'diff'. Treatment group are either the AEX-25 companies, the BEL-20 companies or the CAC-40 companies; control group are the FTSE-100 companies. Year of treatment is either 2011 (AEX-25 and CAC-40) or 2012 (BEL-20). Cluster-robust standard errors are in parentheses. Kernel: Gaussian. Note that when using normal standard errors, the standard errors may become very different from the reported ones: the treatment effects for the treatment groups CAC-40 and AEX-25 are not statistically significant anymore. For the BEL-20 companies, all treatment effects remain statistically significant (for total shareholder turnout at the 5% level, and for small shareholder turnout at the 0.1% level). †$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

A.2. d-i-d Estimators not all Covariates Included

TABLE A.2

d-i-d estimators AEX-25 and FTSE-100 (2010-2011), CAC-40 and FTSE-100 (2010-2011), & BEL-20 and FTSE-100 (2011-2012)

Control groups	**AEX-25**	**BEL-20**	**CAC-40**
	d-i-d (δ)	d-i-d (δ)	d-i-d (δ)
Dependent variable: TURNOUT			
Covariates:			
HHI	5.334**	6.847***	2.765**
	(1.512)	(1.459)	(0.972)
HHI, Elections	5.876**	6.648***	2.287†
	(5.876)	(1.529)	(1.273)
HHI, Elections, dRemunerationreport		5.293†	
		(3.011)	
No covariates	4.006*	7.023***	2.493*
	(1.568)	(1.372)	(1.011)
R^2 (range)	0.10-0.49	0.33-0.63	0.04-0.46
Dependent variable: TURNOUTsmall			
Covariates:			
BLOCK	8.441**	11.738***	4.170**
	(2.794)	(3.195)	(1.526)
BLOCK, Elections	8.617**	11.536***	3.247†
	(2.871)	(3.194)	(1.817)
HHI, Elections, dRemunerationreport	n.a.	9.217*	n.a.
		(4.470)	
No covariates	8.476**	11.669***	4.195**
	(2.868)	(3.228)	(1.567)
R^2 (range)	0.18-0.26	0.76	0.22-0.25

Note: d-i-d estimator using the STATA-command 'diff'. Treatment group are either the AEX-25 companies, the BEL-20 companies or the CAC-40 companies; control group are the FTSE-100 companies. Year of treatment is either 2011 (AEX-25 and CAC-40) or 2012 (BEL-20). Cluster-robust standard errors are in parentheses. Without cluster-robust standard errors, the treatment effects for the CAC-40 are not statistically significant anymore; for the AEX-25 companies, only the d-i-d regression without covariates for TURNOUT is not statistically significant anymore, and for the BEL-20 companies only the regression that includes the remuneration report is not statistically significant anymore for TURNOUT. The remainder of the regressions are all statistically significant at least at the 5% level. One may note that the R-square without covariates is substantially lower in some cases.

†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

A.3. Sample for Parallel Trend Assumption

TABLE A.3

UK sample

Company	Years	Company	Years	Company	Years
Aberdeen Asset Management	2009	Diageo	2007-2009	Prudential	2007-2009
Admiral Group	2007-2009	Experian	2007-2009	Rexam	2007-2009
Aggreko	2007-2009	Fresnillo	2009	Rio Tinto	2008-2009
Amec	2007-2009	G4S	2009	Rolls-Royce Holdings	2008-2009
Anglo American	2007-2009	GKN	2007-2009	Royal Bank of Scotland Group	2008-2009
Antofagasta	2007-2009	GlaxoSmithKline	2007-2009	RSA Insurance Group	2007-2009
ARM Holdings	2007-2009	Hammerson	2007-2009	SABMiller	2007-2009
Associated British Foods	2007-2009	Hargreaves Lansdown	2007-2009	Sage Group	2007-2009
AstraZeneca	2007-2009	HSBC Hldgs	2007-2009	Sainsbury (J)	2008-2009
Aviva	2007-2009	IMI	2009	Schroders	2007-2009
Babcock International Group	2008-2009	Imperial Tobacco Group	2009	Serco Group	2009
BAE Systems	2007-2009	InterContinental Hotels Group	2008-2009	Severn Trent	2007-2009
Barclays	2007-2009	International Consolidated Airlines Group	2007-2009	Shire	2009
BG Group	2007-2009	Intertek Group	2009	Smith & Nephew	2008-2009
BHP Billiton	2008-2009	Johnson Matthey	2007-2009	Smiths Group	2008-2009
BP	2008-2009	Kazakhmys	2008-2009	SSE	2009
British American Tobacco	2009	Kingfisher	2007-2009	Standard Chartered	2007-2009
British Land Co	2007-2009	Land Securities Group	2007-2009	Standard Life	2007-2009
British Sky Broadcasting Group	2007-2009	Legal & General Group	2007-2009	Tate & Lyle	2007-2009
BT Group	2007-2009	Lloyds Banking Group	2007-2009	Tesco	2007-2009
Bunzl	2007-2009	Marks & Spencer Group	2007-2009	Tullow Oil	2007-2009
Burberry Group	2007-2009	Meggitt	2007-2009	United Utilities Group	2007-2009
Capita	2009	Morrison (Wm) Supermarkets	2009	Vedanta Resources	2009
Capital Shopping Centres Group	2007-2009	National Grid	2007-2009	Vodafone Group	2009
Carnival	2007-2009	Next	2007-2009	Weir Group	2007-2009
Centrica	2007-2009	Old Mutual	2007-2009	Whitbread	2007-2009
Compass Group	2008-2009	Pearson	2009	Wolseley	2007-2009
Croda International	2007-2009	Petrofac	2007-2009	Xstrata	2007-2009

TABLE A.4

Belgian sample

Company	**Years**
Ab Inbev	2007-2009
Ackermans v. Haaren	2007-2009
Bekaert	2007-2009
Belgacom	2007-2009
Confinimmo-Sicafi	2007-2009
Colruyt	2007-2009
Delhaize group	2007-2009
D'ieteren	2007-2009
Elia	2007-2009
Kbc	2007-2009
Solvay	2007-2009
UCB	2007-2009
Umicore	2007-2009

TABLE A.5

French sample

Company	**Years**	**Company**	**Years**
Accor	2007-2009	LVMH	2009
Air liquide	2007-2009	Michelin	2007-2008
Alcatel-lucent	2007-2009	Pernod ricard	2007-2009
Alstom	2008-2009	Peugeot	2007-2009
AXA	2007-2009	PPR	2008-2009
Bnp paribas act a	2007-2009	Renault	2008-2009
Bouygues	2007-2009	Safran	2008-2009
Cap gemini	2007-2009	Saint gobain	2008-2009
Carrefour	2007-2009	Schneider electric	2007
Credit agricole	2007-2009	Societe generale	2009
Danone	2007-2009	Sanofi-aventis	2007-2009
Eads	2007-2009	Stmicroelectronics	2007-2009
EDF	2009	Technip	2008-2009
Essilor intl	2007-2009	Total	2007-2009
France telecom	2009	Unibail-rodamco	2007-2009
Lafarge	2007-2009	Vallourec	2007-2009
Legrand	2007-2009	Veolia environ	2007-2009
Lagardere s c a	2007-2009	Vinci	2007-2009
L'oreal	2007-2009	Vivendi	2008-2009

A.4. d-i-d Estimates (Placebo)

TABLE A.7

d-i-d placebo estimation for TURNOUT

AEX-25 and FTSE-100 (2009-2010) & CAC-40 and FTSE-100 (2009-2010)

	AEX-25 placebo (2009-2010)	**CAC-40 placebo (2009-2010)**
Outcome variable	TURNOUT	TURNOUT
d-i-d (δ)	**2.974**	**-2.410**
	(4.461)	**(1.551)**
R^2	0.13	0.02
N control:	156	158
N treated:	33	52

Note: Placebo d-i-d estimator using the STATA-command 'diff'. Treatment group are either the AEX-25 companies or CAC-40 companies; control group are the FTSE-100 companies. Year of placebo treatment is 2009. The 2009 covariates are the same as the 2010 covariates for the FTSE-100 companies and the CAC-40 companies. Cluster-robust standard errors are in parentheses. The companies that are included in the AEX-25 sample are: Aegon NV, Akzo Nobel NV, Kon. BAM Groep NV, DSM NV, Fugro NV, Gemalto NV, ING Group NV, KPN NV, Royal Imtech NV, SBM Offshore NV, TNT NV, and Wolters Kluwer NV.

A.5. Information Published Prior to AGM

TABLE A.8.

Publication of information on the company's website

Provisions regarding:	**Belgium**	**France**	**Netherlands**	**UK**
Content of the notice of the meeting	Article 533bis WvV	Article R225-73 Decree	Article 2:114 DCC (and 5:25ka Wft)	Section 311 CA 2006
Information on the company's website	Article 533bis WvV	Article R210-19, R225-73 and R225-73-1 Decree	Article 2:113(6) DCC	Section 311A CA 2006

CHAPTER 5 - SMALL SHAREHOLDER VOTING COORDINATION IN CONCENTRATED OWNERSHIP STRUCTURES

ABSTRACT

Blockholders can behave opportunistically because small shareholder voting suffers from coordination problems. In this chapter we investigate the features of small shareholder voting using a theoretical framework. Specifically, we investigate when defeating a blockholder's resolution is optional for shareholders. When the willingness-to-vote in the shareholder base is sufficiently high the Pareto efficient equilibrium is reached. However, if small shareholders are not able to coordinate, transferring voting rights can be a solution. Regulatory initiatives that facilitate communication between small shareholders or focus on institutional investors and corporate governance tools that alter or add the threshold in the voting game also contribute to solving the coordination problem. These corporate governance initiatives can increase the relevance of AGMs in Europe.

1. INTRODUCTION

In this part of the research we study a model to present the behaviour of small shareholders in concentrated ownership structures, in order to obtain more insights into the functioning of AGMs. In particular, we consider situations where an opportunistic blockholder tries to increase his personal benefits, and evaluate the behavioural interactions between this blockholder and small shareholders.

1.1. Ownership Concentration

The Berle and Means (1932) model of dispersed ownership was the dominant corporate model for large public companies for a long time. Scholars today agree that it is not a common model for every country. We have seen in the introduction to this dissertation that ownership patterns in continental Europe and Asian countries are more concentrated than in Anglo-Saxon countries, which is considered a stylized fact (for instance, Van der Elst, 2008; Barca and Becht, 2001; Becht and Roëll, 1999; La Porta et al., 1998, 1999; Franks and Mayer, 1995). Ownership concentration has important consequences for corporate governance and has been analysed by scholars in different settings, for example in take-overs (Grossman and Hart, 1980, 1988; Shleifer and Vishny, 1986). In their seminal work, Grossman and Hart (1980) show that a raider without a stake would never benefit from taking over a company to improve it, since atomic shareholders are able to free-ride on this improvement. Moreover, since Grossman and Hart also assume that there are some takeover and monitoring costs involved, the raider would incur a loss. The externality in this public good problem – i.e., all atomic shareholders can benefit from the raider's efforts – can be internalized when a shareholder becomes large enough (Grossman and Hart, 1988). In other words, ownership concentration would be a solution to the free-rider problem in take-overs.

Legal and economics scholars also investigated the (presumed positive) link between ownership concentration, increased shareholder monitoring and firm value (Kamerschen, 1968). The results of many of these studies were inconclusive, however. Demsetz and Lehn (1985) who also did not find a significant relationship between ownership concentration and profit for a sample of 511 US corporations, argue that '[a] decision by shareholders to alter the ownership structure of their firm from concentrated to diffuse should be a decision made in awareness of its consequences for

loosening control over professional management. The higher cost and reduced profit that would be associated with this loosening in owner control should be offset by lower capital acquisition cost or other profit-enhancing aspects of diffuse ownership if shareholders choose to broaden ownership.' (p. 1174). This trade-off shows that they presume positive blockholder monitoring effects. Many scholars have discussed blockholder incentives to monitor corporate affairs (Hirschman, 1970; Aghion, Bolton and Tirole, 2004).

But blockholder monitoring is certainly not always desirable. For example, Burkart, Gromb and Panunzi (1997) discuss the costs of excessive control or blockholder 'over-monitoring': the authors argue that there is a trade-off between the gains of large shareholder monitoring and those of managerial discretion. Managers will take on more initiative in widely dispersed ownership structures. Others argue that blockholders not only over-monitor corporate management, but will engage in opportunistic behaviour at the expense of minority shareholders. [418] Blockholders may have incentives to use their majority stake to maximize their private benefits instead of the total value for all shareholders. For example, they can choose to forego profitable investment opportunities when these investments require additional external funds to avoid a dilution of their controlling stake (i.e., Leech, 1987, p. 236). A large shareholder can negotiate a cheap loan with the company, for example with an interest rate below the market rate (also called '*tunneling* behaviour'). Importantly, the smaller the *de facto* controlling stake of the blockholder, the larger the benefits of opportunistic behaviour at the company's expense. Some authors argue that this opportunistic behaviour can be limited by the design of the articles of association (Burkart, Gromb and Panunzi, 1997), while others say that this is not (entirely) possible because of the imperfect Coasian world that we live in (Bebchuk and Roe, 1999). In addition, note that limitation of this opportunistic behaviour is also not always efficient *per se*. For example, Pacces (2011) analyses the disciplining mechanisms against expropriation in the US and the UK and, *inter alia,* finds that these may negatively affect the efficient decision-making of blockholders, which brings us back to the benefits of ownership concentration.[419]

1.2. Small Shareholder Oversight

The EC recognizes the problem of opportunistic behaviour and has proposed to enhance regulation on the matter, in particular on related-party transactions. The EC states that these transactions 'create the opportunity to obtain value belonging to the company to the detriment of shareholders, and in particular minority shareholders' (2014, p. 5). To enhance shareholder oversight on these transactions the EC has, *inter alia*, proposed to implement a shareholder's vote on important related-party transactions, for example those with a value of over 5% of the company's assets. Enhanced shareholder oversight on say on pay issues is proposed.

Formal decision-making on matters that are outside the board's purview and/or listed in the law or the articles of association are made by the AGM (for example, article 2:117(1) DCC, section 119 AktG). As we have seen in the introduction, the AGM has an important theoretical role in

[418] In this respect on may also refer to the theory of corporate control offered by Goshen and Hamdani (2016). The authors challenge the view that blockholder act opportunistically, arguing that entrepreneurs retain corporate control to pursue their vision. The authors call this the 'diosyncratic vision' of entrepreneurs.

[419] In this respect one refer also to a recent study of Goshen and Hamdani (2016).

corporate governance, but its functioning in practice is often criticized. Common criticism includes low attendance rates of (small) shareholders, often referred to as 'shareholder absenteeism'. Shareholder voter turnout is especially low in continental European countries, where ownership concentration is generally higher (*cf. supra*, chapter 2 of this research, also see: Van der Elst, 2011; Renneboog and Szilagyi, 2013; ISS Voting Results 2010, 2011). Thus, *de jure* non-controlling opportunistic blockholders may have *de facto* controlling voting power in AGMs. There are several examples of *de facto* controlling shareholders, even in AGMs of companies that are part of main indices. When we look at our panel data sample of 1,255 AGMs of 252 companies that we have used in the previous chapters, we see that during 131 of these AGMs of 48 different companies there was a *de facto* controlling shareholder with a *de jure* a non-controlling stake (during 196 AGMs there was a *de facto* and *de jure* controlling blockholder). Most of these companies are Belgian or Austrian companies.

During some of these meetings we see a large discrepancy between the interests of the blockholder and small shareholders that is reflected in the voting outcomes. For example, at the 2014 AGM of Independent News & Media Plc (Ireland) one of the items on the agenda was a proposal to authorise the establishment of a long-term incentive plan. Around 20% of the votes were cast against this proposal. Since the largest shareholder at this meeting had a controlling stake of almost 60% of the votes present (his *de jure* stake was only around 30%), around half of the other shareholders voted against this long-term incentive plan. Another example is the TomTom NV remuneration policy (the Netherlands) in 2014; during its 2014 AGM, the founders of TomTom together had a stake of around 47%. Since the shareholder turnout was around 72%, these founders held a controlling stake of over 65%. The remuneration policy and option plan both received over 17% of the votes against, indicating that around half of the other shareholders that were present voted against these proposals. And, during the 2014 AGM of Bekaert NV (Belgium), the remuneration report received over 18% of the votes against. Since the total voter turnout at this meeting was less than 50%, the large shareholder `Stichting administratiekantoor Bekaert' held over 76% of the voting rights during this AGM. This indicates that almost 80% of the other shareholders that were present during this meeting voted against the remuneration proposal.

But why do small shareholders allow these larger shareholders to exercise *de facto* control and to behave opportunistically if they are clearly against particular resolutions? To answer this question and to explore solutions to this problem, we develop a theoretical framework to explore the features of (small) shareholder voting in concentrated ownership structures. In our framework, the aggregate of small shareholders has a majority of the voting rights. These shareholders are thus, in theory, able to beat large shareholder proposals, but have problems uniting their powers in practice.

1.3. Outline of this Chapter

In the next two sections we provide an introduction to the literature on public goods and solutions to coordination problems. We then introduce a theoretical framework for small shareholder voting in section 4. This analytical model provides insights into how small shareholders decide to vote and how their aggregate voting effort can be enhanced. One of the solutions that will be presented is the decoupling of voting rights from capital rights (section 5). However, as we will see, this solution may not be sufficient as coordination problems will remain. In section 6 we therefore evaluate other solutions to the public good problem of small shareholder monitoring, including

communication forums at company websites and other corporate governance tools. Section 7 outlines conclusions, policy implications and recommendations.

2. COORDINATION PROBLEMS

2.1. Voting Power Theory

Previous research has mainly focused on classical voting power indices to explain shareholder voting (Leech, 2002; Rydqvist, 1986; Overland, Mavruk and Sjögren, 2012; Poulsen, Strand and Thomsen, 2010, and *cf. supra*, chapters 2-4 of this research and chapter 2, section 6 in particular). Two classical power indices dominate: the Banzhaf index and Shapley-Shubik index. These models do involve some simplification of reality when applied to shareholder voting games, however. These voting power indices measure *a priori* voting power. Past behaviour, turnout rates and preferences are not considered. The indices assume that all shareholders always exercise their voting rights, which is certainly not the case in practice; voter turnout rates for listed companies are virtually always lower than 100%. Voting power indices also do not consider shareholder preferences (Kaniovski and Leech, 2009). These preferences are very important when analysing shareholder voting. For instance, in the examples that were mentioned in the previous section we see a clear divergence between the interests of the *de facto* controlling blockholder and those of small shareholders. In this case the voting outcomes are not equally likely anymore, but the voting result depends on the ability of small shareholders to coordinate toward a certain outcome.

We also included these two classical voting power indices in our analyses of (small) shareholder voter turnout in chapter 3: although our findings suggest that small shareholders indeed consider voting power when they decide whether to attend the meeting, the effect was not present in every model. We suspect that the aforementioned flaws of the voting power indices in the shareholder voting framework have something to do with this. To investigate (small) shareholder voting more closely we determine 4 different scenarios that small shareholders can face, using expectations for a small minority shareholder *i* that considers voting at an AGM:

1) Scenario: *Expected to be Beneficial and Adopted*:
The resolution that is on the agenda of the AGM is beneficial to (most of the) shareholders, including the small shareholder *i* and this shareholder expects that the resolution will be adopted.

2) Scenario: *Expected to be Detrimental and Dismissed*:
The resolution that is on the agenda of the AGM is detrimental to (most of the) shareholders, including the small shareholder *i* and this shareholder expects that the resolution will be dismissed.

3) Scenario: *Expected to be Detrimental and Adopted*:
The resolution is detrimental to a majority of shareholders, including the small shareholder *i*, but this shareholder expects that the resolution will still be adopted (due to concentrated ownership structures).

4) Scenario: *Expected to be Beneficial and Dismissed*:
The resolution is beneficial to some shareholders, including the small shareholder *i*, but this shareholder expects that the resolution will nonetheless be dismissed.

In the first two situations, the outcome is expected to be beneficial for shareholder *i* regardless of whether this shareholder will exercise his voting right during the AGM. However, in scenario 3 and 4 the small shareholder will be worse off if the expected voting outcome comes to pass. Situation 4 refers, for example, to shareholder proposals that are put on the agenda by a small (group of) shareholder(s). Earlier research shows that shareholder proposals are relatively rare in Europe and seldom adopted (Renneboog and Szilagyi, 2011). The fourth situation may also entail management proposals that are beneficial to small shareholders but blocked by a large shareholder such as the proposal to distribute dividends or to allot new shares. The third scenario directly relates to conflicts between controlling shareholders and minority shareholders as well. In this analysis, we focus on this third situation, but the parallel with the blocked management proposal in the fourth one is notable.

We assume that virtually all small shareholders are against the resolution promoted by a large shareholder. The resolution that benefits the large shareholder is expected to be detrimental to small shareholders (in other words, the expected added value of passing this resolution is negative to these shareholders) and thus we know something about the preferences of these small shareholders. One may, for example, think of related party transactions, the election of the relative of a major shareholder as a director or some executive pay decisions. In this case the decision of the small minority shareholder to exercise his voting right does not entirely depend on his voting power, but merely on his expectations on the voting activity of other small shareholders. As such, we need a different approach than the classical voting power indices.

If a specific resolution is only beneficial to this large blockholder, the small shareholder expects that, *should* small shareholders exercise their voting right at the AGM, they will vote against this resolution. Hence, the payoff function for this small shareholder depends on *how many other shareholders are expected to take a certain action as well*. These games are called 'coordination games'. In addition, as we have seen in the introduction chapter of this research, benefits that follow from small shareholder monitoring can be considered as a public good due to its non-excludability, since a shareholder cannot exclude another shareholder from the benefits of its monitoring and these benefits are non-rival. This offers the opportunity to free-ride on the monitoring efforts of others. Hence, we must consider a shareholder coordination game with a free-rider problem.

2.2. Shareholder Voting Games

We use a game-theoretic approach to introduce shareholder coordination problems in this section. A well-known coordination game with multiple equilibria is the stag-hunt game (or assurance game). In this game, there are two identical players who choose simultaneously from between two actions, a safe strategy *L* that yields a low payoff of 1 and a social cooperation strategy *H* that yields a high payoff of *h* if the other player also chooses this action; otherwise this strategy yields zero otherwise. The stag-hunt game has two Nash equilibria, i.e., a pair of strategies so that no shareholder can increase his payoff by unilaterally changing its strategy, in pure strategies: (*H,H*) = (*h,h*) and (*L,L*) = (*l,l*). Equilibrium *(H,H)=(h,h)* clearly is the Pareto efficient equilibrium (i.e., it is

not possible to make one of the players better off without hurting the other player at the same time). Table 1 shows this simple stag-hunt game:

TABLE 1

Stag-hunt Game (where $h > l$)

	Player *j*	
Player *i*	Strategy H	Strategy L
Strategy H	(h,h)	$(0,l)$
Strategy L	$(l,0)$	(l,l)

We can apply this simple coordination game to a situation of shareholder voting with two identical shareholders (see table 2 below). Only when both shareholders decide to vote can they both earn net benefits $\pi = r - c$, where r represents the benefits (revenue) from voting and c the voting costs. However, if only one of the two shareholders decides to vote whereas the other does not, this shareholder incurs voting costs c, whereas the other shareholder earns zero. If both shareholders decide not to attend the AGM, they do not incur any voting costs, but also receive no benefits (the *status quo*). The problem is that this game has two Nash equilibria in pure strategies: (*Vote, Vote*) = (π,π) and (*Not Vote, Not Vote*) = $(0,0)$. If shareholders fail to coordinate the Pareto efficient Nash equilibrium, (*Vote, Vote*) = (π,π), they end up in the 'non-voting equilibrium', (*Not Vote, Not Vote*) = $(0,0)$.

TABLE 2

Shareholder Voting Game (where $\pi > 0$ and $C < 0$)

	Shareholder *j*	
Shareholder *i*	Vote	Not Vote
Vote	(π,π)	$(c,0)$
Not Vote	$(0,c)$	$(0,0)$

Many economists have addressed this issue of two equilibria. For example, Schelling (1960) introduced the focal point – also called the 'Schelling point'. A focal point is a natural reason that causes players to focus on one of the Nash equilibria. Whereas we would expect that the focal point would be the Pareto dominant equilibrium (*Vote, Vote*) = (π,π), or in the stag-hunt game $(H,H) = (h,h)$, scholars have shown that players often fail to coordinate on this beneficial equilibrium (Van Huyck, Battalio and Beil, 1990, 1991; Kim, 1996).

The stag-hunt game can also be played with N players. The strategy H yields payoff h if at least M players choose the same action H, but it yields zero otherwise. In this respect, M is the critical mass: the amount of players that is needed to yield the public good, or to end up in the 'good' equilibrium. In order to define M we can use a simple majority rule (M is exactly equal to $N/2+1$), a qualified majority rule (for example, M exactly equal to $3N/4$ or $2N/3$) or a unanimity rule ($M = N$). A feature of coordination games with N players is that player i's payoff depends on his own action and on the sum of the actions taken by the other players.

We can also apply coordination games with N players to the small shareholder voting game in table 2. Assume that every shareholder holds one voting right. For voting items with a simple majority rule, the strategy Vote yields payoff r for each player if at least $M \geq N/2 + 1$ small shareholders choose the same action Vote (including this player), but it yields $c < 0$ otherwise. The

total payoff if the critical mass is reached is thus $N*r$. The net benefit from voting for shareholder *i* when the critical mass is reached is denoted by $\pi = r - c$ if this shareholder has exercised his voting right and *r* if not. We can summarize the analysis of *N* small shareholders that want to block a resolution of a large blockholder who holds a *de jure* minority stake, with a simple majority rule in the following three tables:

TABLE 3

Shareholder Voting Game with N Small Shareholders (where $\pi > 0$ and $c < 0$)

	Small shareholders = *M-1*	
Small shareholder *i*	Vote	Not Vote
Vote	*[π; (M-1)π]*	*(c,0)*
Not Vote	*[0; (M-1)c]*	*(0,0)*

In this table, the critical mass is denoted by *M,* the cost of voting by *c,* and the payoff for each player if the critical mass is reached is denoted by $\pi = r - c$. Table 3 shows the situation when shareholder *i* expects that he or she is the pivotal voter: in this case, the critical mass is *almost* reached, and the vote of shareholder *i* turns the losing coalition of small shareholders into a winning one. Again there are two Nash equilibria in pure strategies; (*Vote, Vote*) = (*π, (M-1)π*) and (*Not Vote, Not Vote*) = (*0,0*). If shareholder *i* expects these *M-1* shareholders to exercise their voting rights, he will also do so.

However, when the free-rider problem is present and shareholder *i* expects that there are already enough small shareholders attending the AGM, the situation can be shown as follows:

TABLE 4

Shareholder Voting Game with N Small Shareholders (where $\pi>0$ and $c<0$)

	Small shareholders = *M* [420]	
Small shareholder *i*	Vote	Not Vote
Vote	*(π; Mπ)*	*(c,0)*
Not Vote	*(r; Mπ)*	*(0,0)*

In this table, the critical mass is denoted by *M,* the cost of voting by *c,* and the payoff for each player if the critical mass is reached is denoted by $\pi = r - c$. Shareholder *i* expects that the critical mass is reached regardless of whether he exercises his voting right. We can eliminate strategy Vote for shareholder *i* since this strategy is strictly dominated by strategy Not Vote and the same holds for the other shareholders. As a result, in this game, there is only one Nash equilibrium; (*Not Vote, Vote*)=(*r; Mπ*). Now we consider the situation when shareholder *i* does not think enough shareholders will be present, whether or not he attends the AGM:

[420] The outcome of this game holds also for all other situations where shareholder *i* expects that the amount of other small shareholders voting ≥ *M*.

TABLE 5

Shareholder Voting Game with N Small Shareholders (where $\pi>0$ and $c<0$)

	Small Shareholders = *M-2* [421]	
Shareholder *i*	Vote	Not Vote
Vote	[*c; (M-2)c*]	(*c,0*)
Not Vote	[*0; (M-2)c*]	(*0,0*)

In this table the critical mass is denoted by *M,* the cost of voting by *c,* and the payoff for each player if the critical mass is reached is denoted by $\pi = r - c$. Again, the strategy Vote for shareholder *i* (and for the other small shareholders) is strictly dominated by the strategy Not Vote. The only Nash Equilibrium in this game is (*Not Vote, Not Vote*) = (*0,0*).

The latter two games show that – in cases where the small shareholders are rational and consider their vote to be insignificant – small shareholders will not exercise their voting rights at AGMs. Only in Table 3 are small shareholders willing to vote during AGMs.

We summarize the payoffs from the actions Vote or Not Vote for shareholder *i* seen in tables 3-5 in table 6:

TABLE 6

Shareholder Voting Game with N Small Shareholders (where $\pi>0$ and $c<0$)

	Expectations shareholder i		
Actions shareholder i	Expected turnout of other small shareholders ≥ M	Expected turnout of other small shareholders ≤ *M* - 2	Expected turnout of other small shareholders = *M* - 1
Vote	*C*	*c*	$r - c = \pi^*$
Not Vote	*0* *	*0* *	*0*

* Optimal choices for shareholder *i*.

3. PUBLIC GOOD GAMES AND THEIR SOLUTIONS

Small shareholder monitoring is considered a public good that suffers from free-riding problems. Adding a threshold to a public good problem turns it into a coordination game. There is a large and diversified literature on public good games and approaches to solving the accompanying free-rider problems, especially in the field of environmental economics (quasi-public com-mons access goods such as oceans and atmosphere are widely discussed, for instance see Demsetz, 1967; Barrett, 1990). Classical economic rational choice theory suggests that free-rider problems are severe and hard to solve. The general solution to free-rider problems in the production of a public good is to exclude the players that do not contribute to it from enjoying its benefits or punish them – i.e., turning the public good into a private one (in a take-over bid situation see Grossman and Hart, 1980, p. 59; the authors proposed introducing the dilution of shares after the take-over, to punish small shareholders for their free-riding behaviour in such a way that free-riding is not beneficial anymore). In practice, this is not always possible in the provision of a public good, as 'non-excludability' lies at the core of public good games. Punishments may not be desirable in every situation, either, and are a rather unimaginable solution in our case of shareholder voting.

[421] The outcome of this game holds also for all other situations where shareholder *i* expects that the amount of other small shareholders voting ≤ *M-2*.

Although the aforementioned solution is rather effective, it is also unfeasible and thus many economists, social and political scientists and psychologists have looked for other options as well (Ledyard, 1995). Marwell and Ames (1981) distinguish two versions of the free-rider hypothesis; the 'weak' version, which states that the voluntary provision of public goods by groups will be sub-optimal, and the 'strong' version that holds that (virtually) no public goods at all will be provided through voluntary means, and test whether these versions hold in an abstract experimental situation. They conclude that many of the experimental results do not support the strong free-rider hypothesis as some people voluntarily contribute to public goods. However, free-riding does exist, as people do not contribute to the optimal amount of the public good, which confirms the 'weak' version. Oliver and Marwell (1988) argue that the theory of collective action does not predict that coordination never occurs, but that it will not consist of small isolated contributions. Rather, it will involve a small number of participants that make contributions because they know, or expect that, they can 'make a difference'. Hence, purely theoretical economic considerations of the free-rider problem in public good games are not sufficient.

Many scholars have studied (and continue to study) public good games in experimental settings. There is a large diversity of studies in this category. Ledyard (1995) provides a survey and tries to answer the fundamental question – what improves cooperation? He lists 19 variables that have been identified by researchers as having an effect on the level of contributions, and identifies the direction and level of the effect (Table 2.10 'Stylized Facts', p. 143). Some of the variables that he identified are relevant for our situation. These are: i) homogeneity and common knowledge, ii) communication, and iii) thresholds. We discuss them below:

Homogeneity and common knowledge: Ledyard found that participant homogeneity and the availability of information usually have positive effects on contributions.[422] As we have seen in the previous sections of this study, there are large differences among shareholders. Shareholders are definitely not homogeneous, although they all have in common that they are the 'residual claimants' of the company. The level of 'common knowledge' – that players know their own payoff and others – is hard to define in shareholder voting games. Information is widely available due to disclosure obligations in regulations and soft law, provided through annual reports and accompanied remuneration reports, for example. But it may not always be feasible for many individual shareholders to completely 'access' this information due to inability, a lack of available time and other resources or interest (Velasco, 2006). Shareholder structures are not completely known and other shareholders' motives are definitely not always clear. Large shareholders may also engage in *one-on-ones,* from which they can glean private knowledge.

Communication: Ledyard found that communication positively contributes to the provision of public goods. This effect is widely recognized in the existing literature base. Communication shapes expectations and enables players to coordinate their actions. Players may reveal private information through (costless) communication. Many authors have shown that communication of private information contributes to the efficient provision of a public good, including *cheap talk* (i.e., communication between players that does not directly affect the payoffs of the game, see Crawford and Sobel, 1982; Forges, 1986; Palfrey and Rosenthal, 1991; Oprea, Charness and Friedman, 2014; Palfrey, Rosenthal and Roy, 2015). However, although it has been shown that communication

[422] However, he also makes the following 'tentative conjectures' on homogeneity and complete information: i) heterogeneity generally lowers the rate of contribution, unless there is incomplete information and no repetition; ii) complete information generally leads to lower contribution than with incomplete information, unless there is homogeneity (p.160).

improves coordination, the effectiveness of communication may depend on the communication structure and the private information players have (e.g., Palfrey, Rosenthal and Roy, 2015). Communication among small shareholders may thus increase their ability to coordinate their voting effort and defeat a large shareholder. However, since small shareholders of large listed companies are usually unknown and the ownership stakes are widely dispersed, communication without facilitating devices such as a shareholder forum may not be possible. Moreover, many of those small shareholders exercising their voting rights in practice are doing so remotely, and hence do not take part in the debate in the AGM.

Thresholds: The introduction of a threshold transforms games with public goods into a coordination game with a set of additional Pareto-optimal equilibria (Bagnoli and Lipman, 1989; Rauchdobler, Sausgruber and Tyran, 2009). In a game without a threshold there is only one equilibrium which is inefficient: all players fully free-ride and thus contribute zero. In contrast, a game with a threshold has more pure-strategy equilibria. In these games, there is a set of efficient symmetric and asymmetric equilibria with contributions that allow the threshold to be reached. Once such a threshold is attained, the public good will be provided. In this way, the action of an individual player can be essential for whether the public good (i.e. blocking the resolution) is provided or not.

There can be a trade-off between the threshold level and the likelihood that a threshold is reached. More specifically, when a threshold increases, both the benefits and costs of cooperation may increase. Higher thresholds may be more desirable, but players may be less confident that a high threshold can be reached and might worry that their contribution will be wasted. In turn, lower thresholds have lower coordination costs, but may also provide a less desirable amount of the public good. The findings of Rauchdobler, Sausgruber and Tyran (2009) show that higher thresholds generally have a positive effect on contributions, but that these contributions are generally not sufficient to reach it.

4. A THEORETICAL FRAMEWORK OF SMALL SHAREHOLDER VOTING

In this section we use an analytical model of small shareholder participation which includes different small shareholder preferences to evaluate how small shareholders may respond to a detrimental blockholder resolution. This model provides some insights in shareholder coordination failures and explains why regulatory solutions that foster cooperation are needed. Like Grossman and Hart (1980) we assume that parameter a describes the activities engaged in by the company (including investment decisions, hiring decisions and managerial effort) and that there is no uncertainty about the company's profit once activity a has been selected. Grossman and Hart (1980) explain that this function of a can also be seen as the net present value of the future stream of profit generated by activity a or the market value of the company's shares. A denotes the set of all feasible activities for the company. Currently the company is engaged in activity $a_0 \in A$. The company's profit function can be described as $\Pi = f(a_0)$.

4.1. Shareholder Structure

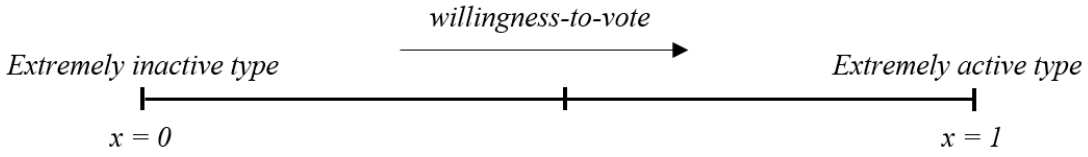
Our company has one blockholder b that holds a stake of w_b of the total voting rights. We assume that the blockholder does not hold a majority stake. The remaining fraction of the shares $(1 - w_b)$

are distributed among N small shareholders, where N is a very large number by assumption. Each small shareholder i holds a fixed voting stake of s_i, and shareholder j a fixed voting stake of s_j, where $s_i = s_j = s$. In other words, the small shareholder voting stakes are symmetric. The aggregate of the stakes of all small shareholders and blockholder add up to one. We assume that there are no special share classes or special voting rights. Hence, every small shareholder holds stake s that contains a fixed amount of voting rights s.

As we have seen in the previous chapters, shareholders are certainly not homogeneous, although corporate law theory generally assumes that (small) shareholders have the same interests: 'all cut from the same cloth, all intent on maximizing profits or share values' (Dunlavy, 2006, p. 1350). Greenwood (1996) calls these theoretical shareholders 'fictional shareholders' in his paper, as this image is a fiction, and does not include any personal characteristics of the 'real' shareholders standing behind this fiction. Although we assume in this model that the small shareholders have the same interests – defeating the blockholder's proposal – we include heterogeneity in their preferences. More specifically, we assume that there is a continuum of N small shareholders that are located at $x \in [0,1]$ with different activism preferences. At $x = 1$ on the interval $[0,1]$ one can find the *extremely active shareholder type* who really enjoys voting during the general meeting. In contrast, at $x = 0$ there is the *extremely inactive shareholder type* who does not derive any utility from voting *an sich*. The closer to 1 on the interval, the more active the small shareholders are, and *vice versa*. The location of a particular small shareholder determines its 'willingness-to-vote', which is the *utility* a particular shareholder gets from voting per se; if shareholder i is located at $0 \leq x_i \leq 1$, and shareholder j is located at $0 \leq x_j \leq 1$, and $x_i, x_j \in [0,1]$ and $x_i > x_j$, the utility that shareholder i derives from voting *an sich* is higher than that of shareholder j. Thus, in our model, small shareholders have symmetric voting stakes (each small shareholder holds a fixed stake s_i), but differ in their voting utilities. The continuum of small shareholders can be graphically presented in the following way:

FIGURE 1

Graphical Presentation Continuum of Small Shareholders



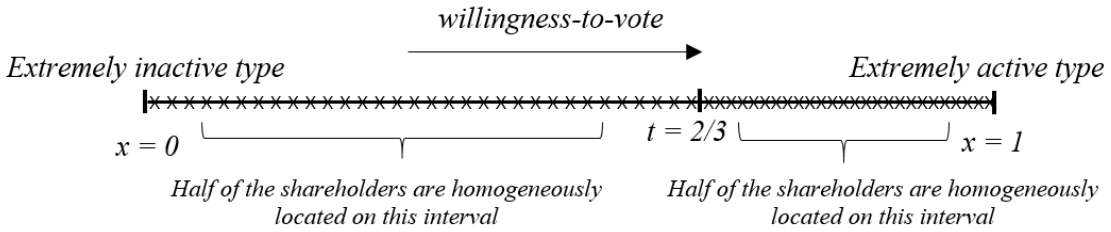
If the N small shareholders are homogeneously distributed along the [0,1] interval, then the average willingness-to-vote of the shareholders is 1/2. However, if the small shareholder base is generally active, more shareholders will be located on the right half of the line and the average willingness-to-vote will be higher than 1/2. Similarly, if there are many inactive shareholders, more shareholders will be located on the left half of the [0,1] interval. In the latter case, the average willingness-to-vote will be lower than 1/2. We introduce variable t to determine the median willingness-to-vote of a particular shareholder base. Hence, if $t = 1/2$, then all shareholders are homogeneously distributed along the entire [0,1] interval. However, if $t > 1/2$, we assume that the majority of the small shareholders are located on the right half of the [0,1] interval. In contrast, if $t < 1/2$, then most small shareholders are located on the left half of the interval. For every value of

t we assume that shareholders are homogeneously located at the right side of the line and also at the left side. For instance, if $t = 2/3$, which means that the shareholder base is rather active, half of the shareholder base is homogenously distributed on the [2/3;1] interval, and the other half of the shareholders is homogeneously distributed on the [0;2/3] interval. Of course, there is an (almost) infinite number of type distributions within shareholder base *N* possible for each average willingness-to-vote *t*. We impose this assumption about the distribution of shareholders in order to keep the model as simple as possible.

We can present the aforementioned assumptions of our model graphically for $t = 2/3$ in the following way (figure 2):

FIGURE 2

Graphical Presentation Continuum of Small Shareholders with t = 2/3



4.2. Payoff Functions

Next we assume that blockholder *b* can put a voting item on the agenda that can be adopted by a simple majority. This item is beneficial to him or her, but detrimental to the company (like a related party transaction that provides in private benefits and has a negative effect on *a*).[423] More specifically, activity a_1 the company engages in after the adoption of the blockholder's resolution, generates a value of $v(a_1)$ to the company:

$$(1) \qquad v(a_1) = v(a_0) - B,$$

where $v(a_1) \geq 0$ (hence, the possibility of bankruptcy is excluded in our model), *B* is the maximum amount of private benefits that can be extracted by the blockholder and thus also denotes the loss to the company. We assume that the blockholder is an opportunistic profit maximizer who optimizes his own benefits at the expense of the other shareholders.

In order to put a voting item on the agenda, blockholder *b* incurs costs *C*. By assumption, the costs to put a resolution on the agenda are strictly smaller than the benefits blockholder *b* gains (*B*) when the resolution is adopted. The utility functions of the blockholder (U_b), the continuum of small shareholders (U_N) and individual small shareholder *i* (U_i) can be described as follows (we assume that the utility of the shareholders directly depends on the value that is generated by the activity):

[423] Hence, in the wording of Roe (2002) our blockholder *b* engages in 'stealing'. Following Pacces (2011).

(2)

$$U_b = \begin{cases} w_b v(a_0) + (1 - w_b)B - C & \text{if adopted;} \\ w_b v(a_0) - C & \text{if not adopted;} \\ w_b v(a_0) & \textit{status quo.} \end{cases}$$

(3)

$$U_N = \begin{cases} (1 - w_b)v(a_1) = (1 - w_b)v(a_0) - (1 - w_b)B & \text{if adopted;} \\ (1 - w_b)v(a_0) & \text{if not adopted or } \textit{status quo.} \end{cases}$$

(4)

$$U_{i=j} = \begin{cases} sv(a_1) = sv(a_0) - sB & \text{if adopted;} \\ sv(a_0) & \text{if not adopted or } \textit{status quo.} \end{cases}$$

Status quo means that the blockholder does not put the resolution on the agenda. The blockholder has a payoff of $(1 - w_b)B - C$, compared to the status quo when the resolution is adopted, whereas the small shareholders together lose $(1 - w_b)B$, and small shareholder i loses sB. When the resolution is dismissed, the blockholder incurs costs C relative to the status quo.

The game has three stages. In stage 1, blockholder b decides whether he or she puts the resolution on the agenda. In stage 2 all shareholders decide whether they exercise their voting rights during the AGM. And in stage 3 the resolution is either adopted or dismissed and the company generates a value of $v(a_1)$ (when adopted) or $v(a_0)$ (when not adopted).

4.3. Stage 2: Small Shareholder Action

Suppose that blockholder b has put the detrimental voting item on the agenda. How will the small shareholders of this firm react to this proposal? Rational small shareholder i is willing to vote when the benefits of the action Voting exceed the benefits of Not Voting. Voting costs for each small shareholder are denoted by the constant c.[424] [425] Equation 5 shows the voting decision for shareholder i:

(5) $\quad \rho_i sB + x_i \geq c, \quad$ where $0 \leq \rho_i \leq 1,$

where $\rho_i sB + x_i$ denotes the benefits of voting and c the voting costs. This equation communicates that the cost of voting is the same for each small shareholder, but that the benefits of voting per se, denoted by the willingness-to-vote, location x_i, differs per shareholder i. Variable ρ_i takes a value

[424] In our framework we take the adoption of the detrimental resolution as a starting point for analysing decision-making: small shareholders do not lose when the detrimental resolution is adopted, but gain when the resolution is dismissed, so that there is a clear benefit to voting in our analysis.

[425] Although shareholders will always incur some cost of voting (i.e., in practice, voting costs will never be zero, *cf. supra*, chapter 4 of this study), one may note that these costs are generally low nowadays throughout Europe as a result of European regulations. The shareholder rights directive already lowered shareholder voting costs substantially and the new proposal of the EC to amend this directive focuses, *inter alia,* on the ease of cross-border voting (also see Van der Elst, 2011). In the last section of the previous chapter we focused on the costs of the shareholder voting decision. In this part of the research we again focus on the benefits (*cf. supra*, chapter 3) and keep the voting costs constant.

between 0 and 1, and denotes the probability that a shareholder assigns to being pivotal. Voting is beneficial when rational small shareholder *i* expects to be able to 'make a difference'. When small shareholder *i* expects that the resolution will be adopted regardless whether he joins the AGM and votes against it, the coordination risk is fully present and the expected benefits of voting will be zero. Hence, in this case, $c \leq x_i$ needs to hold. And, in case shareholder *i* expects that the resolution will be dismissed anyway, and thus shareholder *i* obtains sB regardless whether he or she votes, free-riding on the voting effort of other small shareholders will be optimal. In this case $c \leq x_i$ must also hold in order for shareholder *i* to exercise his voting right. Only when shareholder *i* expects his vote to affect the voting outcome, free-riding may no longer be optimal (when $c > x_i$). In this situation, small shareholder *i* also takes into account the benefits that can be gained through blocking the resolution, and the condition that needs to hold in order to shareholder *i* to exercise its voting rights becomes $c \leq x_i + sB$.

Shareholder *i* expects to make a difference when he or she expects the small shareholder turnout rate, denoted by *a,* to be somewhat smaller than the critical mass (denoted by *m*), which is the fraction of small shareholder needed to defeat the blockholder's resolution. More specifically, shareholder *i* expects to be pivotal when $a = a^* = m - 1/N$, where $1/N$ is the fraction of the total votes of the small shareholders that shareholder *i* can contribute (which is a very small amount). We can summarize these three cases in Table 7.

TABLE 7

Expected Pay-offs for Shareholder i

Situation	Expected value of α	Payoff Action Vote	Payoff Action Not Vote
1	$a < \alpha^*$	$x_i - c$	0
2	$a \geq \alpha^*$	$sB + x_i - c$	sB
3	$\alpha = \alpha^*$	$sB + x_i - c$	0

In situation 1, small shareholder *i* expects the small shareholder turnout rate to be smaller than turnout rate $\alpha^* = m - 1/N$, which is the approximate turnout rate at which he or she expects to be able to make the difference. Hence, in this situation, the action Not Vote is optimal and there may be a coordination problem among the small shareholders. Situation 2 describes the situation where shareholder *i* expects the small shareholder turnout rate to be higher than the critical mass. He or she will free ride on the voting effort of the other shareholders if $x_i < c$. In the third situation shareholder *i* expects to be able to make the difference, and thus votes against the proposal at the AGM if $sB + x_i \geq c$. Hence, probability ϱ_i denotes the expected probability a shareholder assigns to the occurrence of situation 3 as shown in table 7.

Similar to what we have seen in the analyses of coordination problems and the voting power indices in the previous paragraphs and chapters, a rational small shareholder will generally not assign a very large probability to making the difference in the voting poll. The probability of shareholder *i*'s vote mattering is very low, which may indicate that ϱ_i generally will have a low value. However, shareholders definitely do not always act rationally. Some shareholders may be more optimistic than others about their own actions, and can overestimate the effect of their contribution, whereas others may be more pessimistic and even underestimate the effect of their contribution; hence, ϱ_i and ϱ_j can have very different values in the same shareholder voting game.

However, in order to keep the analysis as simple as possible, we assume that the more active shareholders that have a higher willingness-to-vote and also assign a higher value to making the difference ($0 \leq \varrho_i \leq 1$ and $\varrho_i \geq \varrho_j$ if $x_i \geq x_j$).

The next step in our analysis is to find the location of *indifferent shareholder* $\bar{x}$, who is indifferent in the choice between the strategies Voting and Not Voting. This shareholder is located at:

$$\bar{x}(t) = c - \rho_{\bar{x}} sB, \tag{6}$$

where the location of the indifferent shareholder depends on t and $\rho_{\bar{x}}$ denotes the probability the indifferent shareholder assigns to making the difference. We assume that every shareholder located on the right-hand side of the indifferent shareholder on the [0,1] interval assigns *at least* the same probability ϱ_i as the indifferent shareholder. Thus, for every shareholder j that is located at $x_j > \bar{x}$, $\rho_j \geq \rho_{\bar{x}}$ must hold. Similarly, every shareholder located on the left-hand side of this indifferent shareholder assigns *at most* the same probability as the indifferent shareholder to being pivotal: thus, for every shareholder i that is located at $x_j < \bar{x}$, holds that $\rho_j \leq \rho_{\bar{x}}$. Determining the location of the indifferent shareholder is key, since all shareholders to the left of this shareholder on the [0,1]-interval will not exercise their voting rights. In other words, when we know the location of this indifferent shareholder for a given c, we know how many small shareholders will exercise their voting rights.

The critical mass, which is the fraction of small shareholders that is needed to defeat the blockholder's resolution, can be denoted as $m = \frac{w_b}{(1-w_b)}$ under simple majority voting rules.[426] It follows that, in order to establish a blocking coalition, the indifferent shareholder should be at maximum located at (i.e., the 'optimal indifferent shareholder'):[427]

$$\bar{x}^*(t) \leq 1 - \left(\frac{\left(\frac{w_b}{(1-w_b)}\right)}{\frac{\frac{1}{2}}{(1-t)}} \right), \quad \text{for } w_b \leq \frac{1}{3}. \tag{7}$$

where $\bar{x}^*$ is the location of the indifferent shareholder so that the critical mass can be reached for a given value of t. One should note that the most active shareholders are located on the right-hand

[426] m is the stake of the blockholder divided by the aggregate stake of the entire small shareholder base. If a blockholder holds a 30% stake, m has a value of 3/7. This means that at least 3/7 of the small shareholder base needs to exercise their voting right in order to defeat the blockholder. Note that we are discussing a *blocking* coalition of small shareholders under simple majority rules; 50% of the votes against during the AGM is enough to *block* the resolution of the blockholder.

[427] Formula (7) explains the location of the indifferent shareholder. Since our most active shareholders are located on the right half of the [0,1]-interval, one needs to start there. The formula takes into account the distance and the mass of shareholders (hence, the density of the shareholders on each side of the interval, which is [0.5/(1-t)]). We also need to take into account two situations: i) less than half of the small shareholder base is needed to defeat the blockholder: hence, the indifferent shareholder is located to the right of t: this situation is explained by formula (7), or ii) more than half of the small shareholder base is needed to defeat the blockholder (hence, the indifferent shareholder is located to the left of t): the latter situation is shown by formula (8). One may note that less than half of the small shareholder base is needed to block the resolution when the blockholder's stake is smaller than 1/3: $m = \frac{\frac{1}{3}}{(1-\frac{1}{3})} = \frac{1}{2}$.

side of the horizontal line. For instance, for $t = 1/2$, we have $\bar{x}^*\left(\frac{1}{2}\right) = (1 - \frac{w_b}{(1-w_b)}) = (1 - m)$. When the blockholder holds a stake that is larger than 1/3 of the total voting rights, the critical mass must be larger than 1/2. In this case, the indifferent shareholder needs to be located to the left of *t*. Hence, we then have:[428]

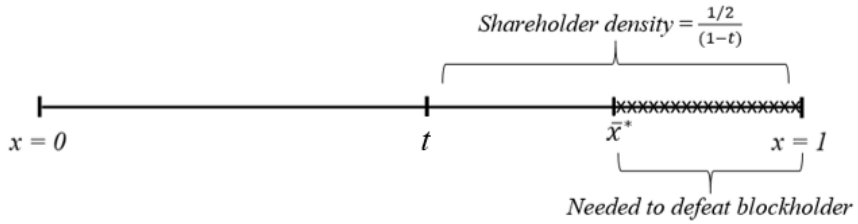
$$(8) \qquad \bar{x}^*(t) \leq t - \left(\frac{\left(\frac{w_b}{(1-w_b)} - \frac{1}{2}\right)}{\frac{\frac{1}{2}}{t}} \right), \quad \text{for } w_b \geq \frac{1}{3}.$$

For instance, if $t = 1/2$, we have $\bar{x}^*\left(\frac{1}{2}\right) = \frac{1}{2} - (\frac{w_b}{(1-w_b)} - \frac{1}{2}) = \frac{1}{2} - (m - \frac{1}{2})$. If the blockholder's voting stake is 40%, then $m = 4/6$ and, accordingly, $\bar{x}^* = 2/6$ (also see section 4.3.1). Formulas (7) and (8) are shown graphically in figure 3:

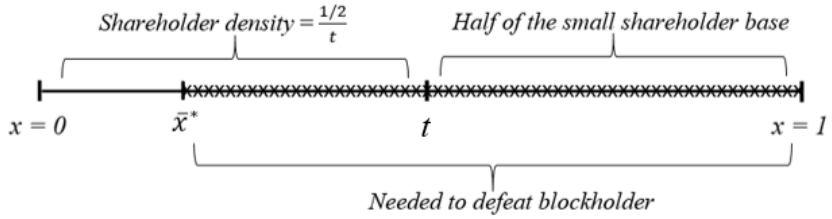
FIGURE 3

Graphical Representation of Formulas (7) and (8)

(7)



(8)



In order for the 'optimal' indifferent shareholder to fulfil condition (7), the costs need to be equal or smaller than his willingness-to-vote and the expected benefits of blocking the resolution:

$$(9) \qquad c \leq 1 - \left(\frac{\left(\frac{w_b}{(1-w_b)}\right)}{\frac{\frac{1}{2}}{(1-t)}} \right) + \rho_{\bar{x}} sB, \quad \text{for } w_b \leq \frac{1}{3}.$$

[428] With this formula, we first calculate the part of the shareholder base needed to block the coalition located to the left of *t* by subtracting one half of the critical mass (i.e., $\frac{w_b}{(1-w_b)} - \frac{1}{2}$). Then we multiply this amount by 1/2 and divide it by *t* in order to account for the distance of interval [0, *t*]. This amount is then subtracted from *t* in order to determine the location on the [0,1]-interval of the optimal indifferent shareholder.

Similarly, when the critical mass is larger than 1/2, the following condition must be true:

$$(10) \qquad c \leq t - \left(\frac{\left(\frac{w_b}{(1-w_b)} - \frac{1}{2} \right)}{\frac{\frac{1}{2}}{t}} \right) + \rho_{\bar{x}} sB, \quad \text{for } w_b \geq \frac{1}{3}.$$

Whether or not these conditions hold, depends on parameters w_b, t, $\rho_{\bar{x}} sB$ and c. More precisely, if voting stake w_b of blockholder b is relatively small, it is small shareholders are likelier to be able to block the resolution. This is also the case if the expected benefits that can be gained by voting, $\rho_{\bar{x}} sB$, are relatively large, or the costs of voting c are relatively low.

4.3.1. Numerical Example

We first consider the situation when blockholder b has a stake of 30% (thus, condition 9 needs to hold). When replacing w_b with 0.3, we have $m = 3/7$. In the previous section we denoted variable t as the median willingness-to-vote in the model. If we assume that the median willingness-to-vote $t = 1/2$, which means that shareholders are allocated homogeneously on the entire [0,1] interval, the shareholders on the interval [4/7;1] need to exercise their voting rights (see equation (7)). Hence $c - \rho_{\bar{x}} sB \leq \bar{x}^* = 4/7$ must hold. If $t = 2/3$, which means that half of the small shareholder base is located at the [2/3;1] interval, $3/7^{\text{ths}}$ of the shareholder base is located at the interval [5/7; 1].[429] Hence, the location of the indifferent shareholder in this situation must be $\bar{x}^* \leq 5/7$. This means that $c - \rho_{\bar{x}} sB \leq \bar{x}^* = 5/7$ must hold. In contrast, if $t = 1/3$, which means that half of the small shareholder base is located on the [1/3;1] interval, the needed $3/7^{\text{ths}}$ of the shareholder base is located more to the left of the horizontal line. In this case $c - \rho_{\bar{x}} sB \leq \bar{x}^* = 3/7$ must hold.[430]

Next we consider the situation when the blockholder holds 40%. The critical mass is now: $\frac{w_b}{(1-w_b)} = \frac{4}{6}$. Hence, a majority of the small shareholder base needs to exercise its voting rights at the AGM. $1/6^{\text{th}}$-part of these shareholders must be located to the left of t. For $t = 1/2$, $c - \rho_{\bar{x}} sB \leq \bar{x}^* = 1/3$ needs to hold. And when $t = 2/3$, the indifferent shareholder must be located at; $c - \rho_{\bar{x}} sB \leq \bar{x}^* = 4/9$.[431] In contrast, when $t = 1/3$, this is $c - \rho_{\bar{x}} sB \leq \bar{x}^* = 2/9$.[432] [433]

4.4. Stage 1: The Blockholder's Decision

The utility of the blockholder (U_b) is $w_b a_0 + (1 - w_b)B - C$ if the resolution is adopted, $w_b a_0 - C$ if the resolution is dismissed, and $w_b a_0$ if he does not exercise his right to add the resolution to

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[429] i.e., $(1 - \frac{(3/7)*(1/3)}{(1/2)}) = 5/7$.

[430] i.e., $(1 - \frac{(3/7)*(2/3)}{(1/2)}) = 3/7$.

[431] i.e., $(2/3 - \frac{\left(\frac{1}{6}\right)*\left(\frac{2}{3}\right)}{\left(\frac{1}{2}\right)}) = 4/9$.

[432] i.e., $(1/3 - \frac{\left(\frac{1}{6}\right)*\left(\frac{1}{3}\right)}{\left(\frac{1}{2}\right)}) = 2/9$.

[433] The maximum amounts of c for each value of t when $w_b = 0.3$ and 0.4 are graphically shown in the appendix to this chapter.

the agenda (the status quo is maintained). When will it be optimal for the blockholder to put the resolution on the agenda? This would be the case if:[434]

$$(11) \qquad \mu_b\big((1-w_b)B - C\big) \geq (1-\mu_b)C \\ \leftrightarrow\ \mu_b(1-w_b)B \geq C,$$

where μ_b denotes the probability the blockholder assigns to the situation that the resolution is adopted (where $0 \leq \mu_b \leq 1$). Whether or not the blockholder adds his resolution to the agenda depends on the value of parameters C and μ_b. Only when the blockholder expects with a probability of one that voting costs for small shareholders, c, are sufficiently low, so that $\bar{x}^*(t) + \rho_{\bar{x}} sB \geq c$, then $\mu_b = 0$ and the blockholder will not put his resolution on the agenda as long as $C > 0$. If the blockholder thinks that there is some probability that his resolution will pass, i.e., $\mu_b > 0$, his decision will depend on the value of μ_b and the private benefits B that he derives from the resolution.

We now consider the situation that either condition 9 or 10 does not hold, depending on w_b – i.e., the indifferent shareholder $\bar{x}$ is located too far to the right for the critical mass to be established – and that the blockholder expects that there is a probability that the resolution will be adopted so that $\mu_b(1-w_b)B \geq C$ holds. In this situation, the rational blockholder decides to put his voting item on the meeting's agenda and small shareholder coordination will fail. Can we solve this problem so that small shareholders will be able to coordinate on blocking the resolution, without having to substantially increase their ownership?[435]

5. MARKET SOLUTION: DECOUPLING OF VOTING RIGHTS

The indifferent small shareholder and the small shareholders that are located to the right of the indifferent small shareholder are always exercising their voting rights at the AGM, since their willingness-to-vote is larger than the voting costs. However, suppose that these small active shareholders are not able to defeat the resolution because the following inequalities hold: [436]

$$(12) \qquad m - \frac{\frac{1}{2}(1-\bar{x})}{(1-t)} > 0 \qquad \text{for } \bar{x} \geq t, \text{ and;} \\ m - \left(\frac{1}{2} + \frac{1}{2}\frac{(t-\bar{x})}{t}\right) > 0 \qquad \text{for } \bar{x} \leq t,$$

[434] Formula (11) shows that the expected net benefits from putting an item on the agenda of the AGM must be positive. μ_b denotes the expected probability that the voting item is adopted according the blockholder: hence, $(1-\mu_b)$ describes the expected probability that the resolution will be defeated.

[435] One may note that, when a quorum of more than 30% is required for the approval of this resolution, small shareholders may choose to *not* exercise their vote. In the wordings of Charléty, Fagart & Souam (2016), the majority in favour of this proposal is then 100% (since the blockholder is the only voter), but the proposal is not adopted. For more insights on this matter and the effects of quorums in shareholder voting decisions, one may consider this aforementioned paper of Charléty, Fagart & Souam (2016).

[436] The first equation describes the situation where less than half of the small shareholder base is needed to defeat the blockholder's resolution. The latter equation holds for situations when the indifferent shareholder's willingness-to-vote is smaller than the average willingness-to-vote of the shareholder base, but this is still not enough to defeat the blockholder's resolution.

where *m* is the critical mass. The active shareholders may look for solutions to defeat the resolution. An option is to buy a particular amount of inactive shareholders' shares so that the active shareholders together have enough voting rights to defeat the resolution during the AGM.

5.1. Empty Voting

Why would these shareholders buy the entire share if they only need the voting rights at a particular AGM though?[437] In case voting and economic ownership decoupling is allowed in the market, these active shareholders will only seek *voting rights*. Voting with these decoupled voting rights is often referred to as 'empty voting' in the literature (e.g., Schouten, 2012; Black and Hu, 2008, 2006). Hu and Black were the first to use this term in their 2006 article. Empty voting is the exercise of voting power without corresponding economic interest (and risk). Whereas Easterbrook and Fischel (1983) argued that the decoupling of the voting rights from the economic right was not possible, Hu and Black observed that "new vote buying" actually has become possible and warn the public about empty voting, stating that '[w]e have found more than twenty publicly known or rumoured examples, almost all since 2002. Several involve empty voting by investors with negative economic interests, who would profit if the companies' share prices go down. How many more have remained hidden is unknown' (p. 907).

Although Hu and Black (2006) already recognized that not all empty voting is bad, empty voting is generally considered a problem in the current literature base (for Europe, also see Clottens, 2012). Hu and Black (2006) originally proposed increased ownership disclosure regulation, but in their 2008 paper, the authors propose further regulatory measures, including providing companies with the possibility to limit empty voters' voting power. In the European Union, there have been some proposals to address empty voting, but real action has not (yet) been undertaken (EC, 2010, pp. 86-87)[438].

Although the dangers of empty voting cannot be ignored, it may actually contribute to a solution in our case. As Hu and Black (2006) already note, empty voting could also move votes from less active to more active investors and therefore enhance shareholder monitoring.

5.2. Homogenous Distribution of Small Shareholders

Let us first consider how this works in our model for the simple situation when $t = 1/2$, which means that small shareholders are homogeneously distributed along the entire [0,1] interval. When

[437] If active shareholders are not able to only buy the decoupled voting rights from the inactive shareholders, they will have to fully compensate the inactive shareholders. More specifically, the inactive shareholders will anticipate the voting of the active shareholders and thus will try to free-ride on their monitoring effort. As a result, the active shareholders have to transfer the gains of defeating the resolution to the inactive shareholders. If the active shareholders are not able to coordinate their actions, small active shareholder *i* does not know how many shares the other active shareholders are going to buy and has to take into account this uncertainty. If the average small active shareholders are too risk averse, too few active small shareholders buy the inactive shareholders' shares and, as a result, the resolution cannot be rejected. Decoupling voting rights from capital rights overcomes this problem. Moreover, institutional investors, for instance often build their portfolios in such way that the expected return is optimized. These shareholders may not be willing to purchase additional shares, only to improve the corporate governance in a particular company. Liquidity is another possible issue.

[438] EC (2010) The Review of the operation of Directive 2004/109/EC, *SEC (2009) 611*. 27 May 2010.

$t = 1/2$, the active shareholders need to obtain the voting rights from at least [$m - (1 - \bar{x})$]-part of the total small shareholder base. The most logical counterparties for these transactions are the inactive shareholders that are located at the interval [0 ; $m - (1 - \bar{x})$] of the horizontal line; these shareholders derive the lowest utility from exercising their voting rights *an sich* (i.e., lowest willingness-to-vote). According to classical rational choice theory, we can conclude that every small shareholder that is located to the left of the indifferent shareholder located at $\bar{x}$ would accept a bid of approximately zero for their voting rights; according to our analysis, these shareholders do not exercise their voting rights, as the utility of voting is lower than the costs of voting for these shareholders (i.e., $x_j + \rho_j sB < c$). In other words, since the costs of actively participating in the AGM for these small shareholders exceed the benefits, their voting right is worthless to them and they will probably accept any offer.

The offer of active shareholders may create expectations about whether the resolution of the blockholder can be defeated. More specifically, it is possible that small inactive shareholders assign some positive probability to the situation that, when contributing their votes, the coalition will become a winning one (hence, $\rho_j sB$ may increase). Since $x_j < c$ holds by assumption, these inactive shareholders will not vote themselves, but will (temporarily) sell their voting rights (for free) to the active shareholders.

But, as we have seen in the discussion of public goods games in the previous sections, the rational choice theory does not always hold in practice. The endowment effect can also play a role (Thaler, 1980). Moreover, it may be possible that the expectations of the inactive small shareholders do not change (substantially) after receiving a request for their voting rights. In this case, when the inactive small shareholders are not willing to lend their voting rights for free, active small shareholders may offer some positive amount of money, suppose σ. We assume that the inactive shareholders accept any bid that is at least equal to the value of their voting right, x_j. Hence, the average bid of an active shareholder that wants to borrow the voting rights of an inactive shareholder that is located on the interval [0; $\bar{x}^* - (1 - \bar{x})$] needs to be at least $\bar{\sigma} = \frac{1}{2}\left(\bar{x}^* - (1 - \bar{x})\right)$ if $t = 1/2$.

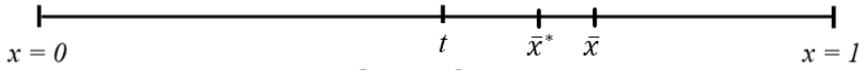
5.3. General Situation

Next we consider the average bid for any value of t. We can distinguish three situations that are displayed in figure 4. In the first situation the indifferent shareholder ($\bar{x}$) and the optimal indifferent shareholder ($\bar{x}^*$) are both located to the right of t. In the second situation these two are both located left of t and in the third situation the optimal indifferent shareholder is located left of t whereas the indifferent shareholder is located to the right.

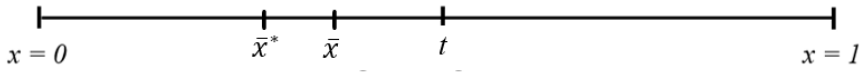
FIGURE 4

Three possible situations

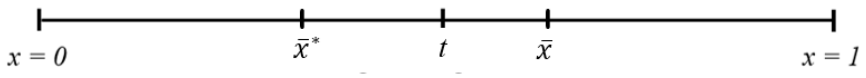
Situation 1:



Situation 2:



Situation 3:



The active small shareholders need to obtain the voting rights of at least $\left(\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{(1-t)}\right)\right)$-part of the total small shareholder base if $\bar{x} > \bar{x}^*$ and $\bar{x} > t$ (situation 1), $\left(\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{t}\right)\right)$-part of the total small shareholder base if $\bar{x} > \bar{x}^*$ and $\bar{x} < t$ (situation 2), and $\frac{1}{2}\left(\left(\frac{(\bar{x}-t)}{(1-t)}\right)+\left(\frac{(t-\bar{x}^*)}{t}\right)\right)$ if $\bar{x} > \bar{x}^*$ and $\bar{x} > t, \bar{x}^* < t$ (situation 3). Next we calculate the average bid that needs to be made to the inactive shareholders. For this we assume that the active shareholders will buy the (voting) stakes of the most inactive shareholders, thus, the shareholders that are located on the left of the [0,1]-interval. In the case that the small inactive shareholders are willing to accept the bid for at least the value of their utility from voting *an sich*, i.e. small inactive shareholder *j* wants to get at least bid $\sigma = x_j$ for his voting stake, the average bid will be $\bar{\sigma}_1 = \frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{(1-t)t}\right)$ in situation 1 (we assume that all inactive small shareholders that sell their voting stakes are located at the left side of *t,* i.e.: $\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{(1-t)}\right) \leq \frac{1}{2}$. In situation 2, we have: $\bar{\sigma}_2 = \frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{t^2}\right)$, and again, we assume that: $\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{t}\right) \leq \frac{1}{2}$. And, in the third situation, we have: $\bar{\sigma}_3 = \frac{1}{2}\left(\left(\frac{(\bar{x}-t)}{(1-t)t}\right)+\left(\frac{(t-\bar{x}^*)}{t^2}\right)\right)$, and, accordingly, we assume that: $\frac{1}{2}\left(\left(\frac{(\bar{x}-t)}{(1-t)}\right)+\left(\frac{(t-\bar{x}^*)}{t}\right)\right) \leq \frac{1}{2}$). An overview is provided in table 8 (where λ = 1, 2, 3):

TABLE 8

Additional stakes needed and average bids

Situation figure 4:	**Fraction of additional stakes:**	**Average bid ($\bar{\sigma}_\lambda$):**
Situation 1	$\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{(1-t)}\right)$	$\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{(1-t)t}\right)$
Situation 2	$\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{t}\right)$	$\frac{1}{2}\left(\frac{(\bar{x}-\bar{x}^*)}{t^2}\right)$
Situation 3	$\frac{1}{2}\left(\left(\frac{(\bar{x}-t)}{(1-t)}\right)+\left(\frac{(t-\bar{x}^*)}{t}\right)\right)$	$\frac{1}{2}\left(\left(\frac{(\bar{x}-t)}{(1-t)t}\right)+\left(\frac{(t-\bar{x}^*)}{t^2}\right)\right)$

In addition to the cost of the bid, active shareholders incur some transaction costs *T* for each voting rights unit *s* they obtain as well (we do not live in a perfect Coasian world). Hence, the average cost of obtaining (voting) stake *s* is $\bar{\sigma}_1 + T$ in situation 1, $\bar{\sigma}_2 + T$ in situation 2 and $\bar{\sigma}_3 + T$ in situation 3. When:

$$k(\bar{\sigma}_\lambda + T) \leq sB, \tag{13}$$

where $\lambda = 1, 2, 3$, and *k* denotes the average amount of voting stakes *s* that each active small shareholder needs to obtain in order to reach the critical mass, it will be beneficial for all active small shareholders to buy their part of the needed voting rights from the small inactive shareholders.

This solution engenders a coordination problem – even when condition (13) holds – that we must take into account.[439] We can summarize the payoff functions for active shareholder *i* in the following matrix (table 9 below), where *X* is the number of active small shareholders that are located at the $[\bar{x},1]$-interval, and $\tilde{k}$ the average amount of stakes active shareholder *i* expects the other active shareholders to buy. Table 9 shows the different possible scenarios for active small shareholder *i*. In the first situation, when active small shareholder *i* expects the other active small shareholders to buy sufficient extra voting rights, shareholder *i* will free-ride. And in the third situation as displayed in table 9, shareholder *i* expects the other small shareholders to buy insufficient voting rights from the inactive small shareholders so that it will be too expensive for the small active shareholder to buy all remaining needed voting stakes. Only in the second situation, when active small shareholder *i* expects that the other active small shareholders each buy $\tilde{k}$ voting rights on average such that the costs of buying the remainder voting stake does not exceed the benefits of defeating the blockholder (i.e., $sB \geq \left(Xk - (X-1)\tilde{k}\right)(\bar{\sigma}_\lambda + T)$), will he buy the remaining voting stakes.[440]

[439] One may note that even when $\bar{\sigma}_1 \approx \bar{\sigma}_2 \approx \bar{\sigma}_3 \approx 0$, there will still be some transaction costs involved, which will result in the same coordination problem.

[440] It may also be the case that the blockholder is able to buy voting rights, for instance when there is an information asymmetry between the blockholder and (part) of the small shareholder base, so that those small shareholders do not recognize the detrimental effect of that blockholder's proposal. We do not include this option in our theoretical model.

TABLE 9

Payoff Matrix for Small Active Shareholder i [441]

Other Active Small Shareholders $(X-1)$ Small Shareholder *i*	**Scenario 1:** Other shareholders buy sufficient extra voting rights.	**Scenario 2:** Other shareholders buy $(X-1)\tilde{k}$ extra voting stakes.	**Scenario 3:** Other shareholders do not buy (sufficient) extra voting rights.
Buys $(Xk-(X-1)\tilde{k})$ extra voting rights	$\Delta U_i = -\big(Xk-(X-1)\tilde{k}\big)(\bar{\sigma}_\lambda + T)$ < 0	$\Delta U_i = sB - \big(Xk-(X-1)\tilde{k}\big)(\bar{\sigma}_\lambda + T)$ > 0 *	$\Delta U_i = sB - \big(Xk-(X-1)\tilde{k}\big)(\bar{\sigma}_\lambda + T)$ < 0
Status quo: does not buy extra voting rights.	$\Delta U_i = 0$ *	$\Delta U_i = 0$	$\Delta U_i = 0$ *

Note: In scenario 1, small shareholder *i* receives the benefits sB from blocking the resolution regardless of whether he decides to buy any additional (voting) stakes. In contrast, in scenario 3, the benefits *sB* do not outweigh the extra costs of buying the needed voting stakes. Only in scenario 2 does the small shareholder buy the needed voting stakes from the inactive shareholders.

* The optimal choices for each scenario.

If active shareholder *i* expects that situation two occurs with probability θ_i, the following condition needs to hold for shareholder *i* to buy the needed voting rights:

$$(14) \qquad (Xk-(X-1)\tilde{k})(\bar{\sigma}_\lambda + T) < \theta_i sB,$$

where $i = 1, 2, .., X,$ and Xk denotes the needed number of stakes the active small shareholders need to buy in order to be able to defeat the resolution of the blockholder, $\tilde{k}$ denotes the expected average amount of stakes the other shareholders will buy, and $(\bar{\sigma}_\lambda + T)$ denote the costs of buying voting stake *s*. When this probability θ_i is low, coordination among active small shareholders is difficult, even when $\bar{\sigma}_1 \approx \bar{\sigma}_2 \approx \bar{\sigma}_3 \approx 0$. In this case, we again have a coordination failure and the optimal outcome will not be reached without measures that stimulate coordination.

How can we overcome this coordination problem? Of course we can assume that the active small shareholders derive some extra utility from voting with each extra stake *s ansich*, let's say δx_i. If $\delta\big(Xk-(X-1)\tilde{k}\big)x_i \geq \big(Xk-(X-1)\tilde{k}\big)(\bar{\sigma}_\lambda + T) \leftrightarrow \delta x_i \geq (\bar{\sigma}_\lambda + T)$ holds, active shareholder *i* buys the additional voting rights.[442] Whether this is a realistic assumption is subject to doubt. Most of the time, institutional investors must exercise their voting rights anyway. Other shareholders that derive utility from being responsible shareholders will also probably not have a much higher utility, for the simple fact that they are already 'responsible'. Moreover, the question and information rights remain the same. In contrast, a shareholder crosses the threshold for the right to put an item on the agenda and table draft agenda by having an extra voting stake, his utility will probably increase. However, these thresholds are relatively high (most of the times around 3 or 5%

[441] Instead of buying, institutional investors may also borrow the additional voting rights, or seek proxies from inactive shareholders. Since each of these actions include some transaction costs *T* by assumption, the outcomes outlined in this Table also hold for these other scenarios.

[442] Instead, one may consider decreasing marginal utility for voting with each extra stake *s*. for example $\tau x_i\sqrt{s}$.Voting with an extra stake *s* will now increase the utility of voting with $\tau x_i\sqrt{2} - \tau x_i$, whereas voting with the second extra stake *s* will only increase the utility with $\tau x_i\sqrt{3} - \tau x_i\sqrt{2}$. This assumption, that entails decreasing marginal utility, may be more realistic for small voting stakes.

of the voting rights). Moreover, the right to agenda entails another form of shareholder activism and whether or not long-term focused shareholders such as institutional investors use this right is subject to question. Although there are some strong arguments that utility will not (substantially) increase when an extra voting unit is added to the voting stake for some shareholders, others may actually derive extra utility in particular circumstances; shareholders, and certainly small shareholders, are a heterogeneous group that may have many different preferences and incentives.

We can conclude that small shareholder coordination may be enhanced by empty voting, but there may remain a small active shareholder coordination problem, and this solution may thus not be very effective in every situation. In other words, the market cannot reach the optimal situation and requires regulation. One should note that empty voting should only be allowed with some caution, considering the negative effects that can result therefore. In the next section we discuss regulatory solutions to this small (active) shareholder coordination problem.

6. REGULATORY SOLUTIONS

In section 3 we have seen that research on public goods remains largely inconclusive about factors that enhance contributions. Ledyard (1995) has summarized part of this literature and come up with a list of factors that may or may not contribute to the provision of public goods. We discussed three of these factors; homogeneity/complete information, communication and thresholds. The first category is a rather difficult one for regulators to address nowadays. The shareholder base differs substantially between public companies and is rather heterogeneous. Information requirements are already widely in place as a result of various (European) regulations, but information will always be incomplete to some extent. In our analysis in this section we focus on the latter two solutions that can be affected by regulation or other corporate governance tools.

6.1. Shareholder Communication Facilities

Communication is one of the solutions for coordination problems. If active shareholders can coordinate the amount of extra voting rights they buy or borrow from inactive shareholders, or the amount of proxies they need to seek, the resolution can be defeated and the optimal governance outcome will be reached.

We thus propose a mechanism that fosters communication among shareholders that are willing to participate. Such a mechanism will also lower transaction costs *T,* thereby increasing the scope for cooperation. For example, a shareholder cooperation forum or an EU proxy solicitation system that enables shareholders to seek proxies from other shareholders, as mentioned in the EC (2011a)[443] Green Paper, can contribute to active shareholder communication and cooperation. In France, many public companies use shareholders' clubs on their websites to communicate with their shareholders and provide information (*Club des actionnaires*). These clubs are not obligatory under French law, but merely initiatives on the part of French listed companies. For example, Total SA indicates on its website that it organises around 30 events per year. If such an online shareholders' club offers communication tools for shareholders, for example via a forum-tool or discussion board, so that active shareholders are able to identify one another and communicate with one another, the coordination problem that is described in the previous sections is likely to

[443] EC (2011a) Green Paper The EU Corporate Governance Framework, *COM (2011) 164 final*. 5 April 2011.

be reduced or even solved. Some companies impose requirements that shareholders meet in order to be able to join the club (for instance, Société Générale SA), while others do not. Some companies even seem to use it as a marketing device, for instance by offering discounts. Besides these shareholder clubs, French companies usually also make use of shareholder committees. GDF Suez NV (part of the BEL-20) has also introduced a shareholder club.

In Germany, section 127a AktG has created a shareholders' forum at the national level, which is available for shareholders at <www.bundesanzeiger.de> (*Aktionärsforum*, ex *Aktionärsforum verordnung*). Paragraph 1 of section 127a AktG states that shareholders (or shareholder associations) may invite other shareholders to the shareholder forum of the Federal Gazette to act jointly or by proxy for the purpose of filing a motion or request or to vote in the general meeting. Article 127a(2) AktG provides that the invitation shall contain the contact details of the shareholder, the company name, the date of the general meeting and either the motion, request, or the proposal for the exercise of voting rights concerning a particular resolution.

6.1.1. Acting in Concert

The current rules on 'acting in concert' may restrict such solutions to the shareholder coordination problem (EC, 2011a)[444]. The lack of uniformity and clearness in these rules results in uncertainty about which forms of shareholder cooperation fall under the definition(s) of acting in concert (i.e., Clerc et al., 2012).[445] The relevant question is, when does shareholder cooperation, for example using a forum, becomes acting in concert? Eumedion (2006) argues that, first of all, this would be the case when shareholders are interconnected in such a way that they are in fact one shareholder, such as family ties or corporate groups. Although under particular circumstances institutional investors may also be acting in concert, Eumedion argues that this is not necessarily the case since these shareholders are often 'like minded' (2006, p. 6). When applying the definition of 'acting in concert' it is important to assess whether the goal of gaining control and consequently changing the ownership structure justifies offering minority shareholder and exit.

The EC recognizes that the existence of different definitions and interpretation at the national level creates uncertainty for international investors wishing to cooperate with other shareholders and may restrict their willingness to cooperate (EC, 2012)[446]. In the 2011 Green Paper the EC (2011a)[447] concludes that the concept of acting in concert should be clarified at the EU level, which could be provided through the development of guidelines. In November 2013, the European Securities and Markets Authority (ESMA) provided some guidance in answering this question by publishing a 'White List' that contains activities 'that will not, *in and of itself*, lead to a conclusion

444 EC (2011a) Green Paper The EU Corporate Governance Framework, *COM (2011) 164 final*. 5 April 2011.

445 The Takeover Directive (2004/25/EC) and the Transparency Directive (2004/109/EC) use different definitions of acting in concert. Some Member States adopt a definition that is quite similar to that in the Takeover Directive, whereas others add the definition of article 10(a) of the Transparency Directive to the definition in the Takeover Directive.

446 EC (2012a) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions application of Directive 2004/25/EC on takeover bids. *COM (2012) 347 final*. 28 June 2012.

447 EC (2011a) Green Paper The EU Corporate Governance Framework, *COM (2011) 164 final*. 5 April 2011.

that the shareholders are acting in concert' (ESMA, 2013)[448]. The activities that are described under items (d)(A)(i) and (ii) and (d)(B), to approve or reject a proposal relating to directors' remuneration, to approve or reject an acquisition or disposal of assets and to reject a related party transaction, respectively, are examples of possible detrimental resolutions that blockholder *b* may put on the agenda. Hence, communication between (active) shareholders on shareholders' forums or discussion boards and a subsequent agreement to vote against a particular item is allowed according to the White List. If shareholders engage in an activity that is on this list, it cannot be *in and of itself* acting in concert under any circumstances, but national authorities evaluate each specific case, taking into account specific facts and circumstances. Hence, the list does not provide shareholders with guaranteed safe havens for particular forms of cooperation, but merely with some guidelines. National authorities can give more detailed guidance.[449]

This list only includes situations when shareholders who act together already retain a particular amount of voting rights.[450] If communication costs are (approximately) zero, or enough small shareholders are willing to engage in such a forum, reaching the critical mass to defeat a particular resolution will not be a problem. In these situations, a forum or other discussion tool will be sufficient to solve the coordination problem. In other situations, active shareholders may be willing to acquire – temporarily – a certain quantity of shares or voting rights, or together seek proxies. Whether this would be allowed is not yet addressed in the White List or other policy documents, and thus remains unclear. One could argue that the underlying goal for doing so for the small shareholders in our model is the same as the activities that ESMA outlines on this White List, i.e., to pursue a stand-alone voting agreement in order to improve corporate governance, and that this activity would plainly fall within the scope of this list. The *Heidelberger Kommentar* (2014, p. 1088) discusses the scope of acting in concert regarding section 127a AktG, and state that '*[f]ür die Annahme eines 'acting in concert' bedarf es gem § 30 Abs 2 S 2 WpÜG bzw § 22 ABs 2 S 2 WpHG entweder einer Verständigüng über die Ausübung von Stimmrechten oder eines sonstigen Zusammenwirkens, das mit dem Ziel der dauerhaften und erheblichen Änderung der unternehmerischen Ausrichtung der AG erfolgt*'. In other words, to 'acting in concert' is either an agreement on the exercise of voting rights or another form of cooperation with the goal of permanently and substantially changing the company strategy required. The authors argue that the shareholder forum '*nur eine punktuelle Koordination für Einzelfällen zulasst*', i.e., it enables selective coordination for individual cases, it would not create any problems in and of itself, but could fall under the 'acting in concert' category in particular cases.

It seems that the current legal framework offers room for these kinds of initiatives. That said, European scholars and politicians have been very sceptical of the decoupling of voting rights in the past. Implementing a European shareholder forum, probably involving a proxy solicitation system, including some necessary clarifications regarding thereof, would probably be the best option.

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448 ESMA (2013) Information on shareholder cooperation and acting in concert under the Takeover Bids Directive, 12 November 2013, *ESMA/2013/142*, Public Statement.

449 In this respect it is interesting to consider the case of the Netherlands, where not the Financial Markets Authority (In Dutch: AFM) but the Enterprise Chamber of the Amsterdam Court of Appeal is responsible for handling concert-party arrangements. As a judiciary authority, the Enterprise Chamber is not bound by the White List. One may refer to De Brauw et al. (2013). Moreover, it cannot provide guidance to shareholders in an *ad hoc* manner, like other national authorities. See ESMA (2013), Appendix A.

450 Paragraph 4.2 of the ESMA information document adds that if shareholders cooperate to engage in an activity not included on the White List, this does not necessarily mean that those shareholders will be regarded as persons acting in concert, but that the case specific facts will need to be examined.

6.1.2. Institutional Investors

Whether shareholders such as institutional investors would be willing to put effort into defeating a detrimental resolution remains an important question. These shareholders face (soft) regulatory pressure to actively monitor the companies they invest in. However, due to large portfolios of sometimes thousands of companies, institutional investors usually delegate monitoring to proxy advisors. When an institutional investor relies on proxy advisor voting recommendations, the recommendation to vote against a particular resolution may signal that it would be beneficial for this institutional investor to cooperate with other shareholders. Since institutional investors are generally required to form a thoughtful judgment (Schouten, 2012) and may be required to disclose how they use proxy advisor recommendations (e.g., UK Stewardship Code Principle 6), institutional investors will probably not blindly follow their advice, although studies found low deviation rates from this advice (Schouten, 2012; Cotter, Palmiter and Thomas, 2010). Moreover, as we have seen before, additional action may come at a cost. We therefore expect institutional investors to (at least to some extent) carefully weigh costs and benefits before engaging in coordination efforts.

In practice we find some form of cooperation among institutional investors as well. In the UK, institutional investors recognize the collective action problem. For these institutional investors, the exit strategy is not an option as it would imbalance their portfolios and/or cause a fall in the value of their investments (Prentice, 2011). As a result, institutional investors have set up the Institutional Shareholders' Committee (ISC). This committee advises shareholders on their rights, and deals with, inter alia, company monitoring. It acts according to its voting rules. Principle 3 of 'The Responsibilities of Institutional Shareholders and Agents – Statement of Principles' holds that: '[i]nstitutional shareholders and/or agents, either directly or through contracted research providers, will review Annual Reports and Accounts, other circulars, and general meeting resolutions. They may attend company meetings where they may raise questions about investee companies' affairs. Also investee companies will be monitored to determine when it is necessary to enter into an active dialogue with the investee company's board and senior management. This monitoring needs to be regular, and the process needs to be clearly communicable and checked periodically for its effectiveness. Monitoring may require sharing information with other shareholders or agents and agreeing a common course of action'.

In accordance with the Steward Ship Code, institutional investors in the UK are required to vote with 'all shares held' (principle 6). The aforementioned initiative and this rule substantially reduce the coordination problem for (small) shareholders in the UK. As we have seen in the previous chapters of our research, small shareholder voter turnout is relatively high. One may note that also the new Shareholder Rights Directive (adopted in March 2017) may reduce small shareholder coordination problems; it puts more emphasis on the long-term engagement of institutional investors and asset managers, for instance with the introduction of transparency requirements. These new provisions may substantially reduce small shareholder coordination problems due to the possible increased availability of information (*cf. supra*, section 3).

6.2. Thresholds

6.2.1. Lowering Thresholds

One of the solutions to the public good problem that has been advocated in the literature is the introduction of a threshold. As we have seen, a threshold transforms a public good problem into a coordination problem. Shareholder voting games already include thresholds at which a particular resolution will be passed. We have also seen that lower thresholds are more attainable, which is quite intuitive since it is easier for small active shareholders to coordinate on a lower threshold. This relationship may imply that qualified majorities for particular resolutions such as RPT or director remuneration and elections are desirable for companies with more concentrated ownership structures. A similar solution that completely solves the coordination problem can be found in the UK Listing Rules; 'independent' shareholders have the right to vote separately on the election of independent directors in companies that have a controlling shareholder (UK Listing Rule 9.2.2AR jo 9.2.2ER, *cf. supra*, chapter 2 of this research).

6.2.2. Adding Thresholds

It is also possible to add an *additional* threshold to the shareholder voting game. Quite recently two new corporate governance tools have been introduced which impose a similar effect: UK Rule E.2.2 and the Australian Two-Strikes rule.

In September 2014, the UK Financial Reporting Council (FRC) introduced a new version of the UK Corporate Governance Code, including a new paragraph of provision E.2.2. With this new rule, companies must explain how they intend to engage with concerned shareholders when a significant proportion of the votes, in the opinion of the board, are against a particular resolution. With this rule the FRC is asking companies to give "a clear signal" upon publication of the voting results that they will initiate engagement with opposing shareholders (2014, p. 7). As a general guideline, according to the GC100 & Investor Group (2013), more than 20% of the votes against can be considered significant. That said, higher or lower levels may be more fitting depending on the situation (2013, p. 29). A similar guideline has not yet been indicated by the FRC.

The other rule, the Australian 'two-strikes rule', was introduced in 2011 in section 250U-250Y of the Australian Corporation Act (hereinafter: ACA). It holds that when the remuneration report is opposed by 25% or more shareholders for two years in a row at the AGM, shareholders vote during the second AGM on whether all directors, except for the chief executive officer or managing director, should stand for re-election (the 'spill resolution', section 250V ACA). If this spill resolution passes with a simple voting majority, a new general meeting (the 'spill meeting') will be organised within 90 days to re-elect these directors. A minimum of three directors should remain after the spill meeting (section 201A(2) ACA). The two directors that received the highest proportions of votes in favour will stay on the corporate board (250X ACA) along with the CEO. And, in case the company fails to hold this spill meeting within 90 days of the spill resolution being passed, all incumbent board members of the company after these 90 days commit an offense.[451]

[451] Monem and Ng (2013) and MacMillan (2012) noticed an 'incongruity' of the two-strikes rule; whereas 'key management personnel' and closely related parties are not allowed to vote on the remuneration report following section 250R(4) of the Australian Corporations Act, they are permitted to vote at the spill meeting (in accordance with section 250V(2), subsection 250R(4) applies also in relation to the spill resolution). Monem and Ng (2013) use the Crown Limited case to illustrate the situation. At the time a majority of shareholder voted against the remuneration report, but its core shareholder, the executive chairman of

This law was passed in in 2011. Nomen and Ng (2013) investigated it in practice and found that 111 companies received a strike in 2011; 122 in 2012. The authors state that for 22 of the 105 companies in their sample that received a strike in 2012 were receiving their second one.[452]

These two new corporate governance rules, Rule E.2.2 and the two-strikes rule, add a second lower threshold to the shareholder coordination game. The rules are in fact somewhat weaker versions of rules that either implement a qualified majority or provide a separate vote to small shareholders: in both situations lowered thresholds makes coordination easier, though the payoffs for small shareholders are different. To illustrate the possible effects of the E.2.2 rule and two-strike rule, we can add an additional threshold (in terms of the critical mass) denoted by $\widehat{m}$ to our model. Note that this threshold is strictly lower than the critical mass to dismiss the resolution, and hence: $\widehat{m} < m$. If shareholders assign some positive value to reaching this threshold, there will be a large probability that this lower threshold is reached. However, if the lower threshold is reached, the detrimental resolution may still be accepted and the profits of the company will still be sub-optimal.

How can reaching this lower threshold with a lower pay-off become a solution to the shareholder coordination game? There can be several ways how this additional threshold increases small shareholder turnout in general. First of all, if the positive value of reaching the lower threshold is sufficiently high, this additional threshold adds another situation to the game in which a small shareholder expects to make the difference and exercises his voting rights. Hence, it increases the probability that a small shareholder decides to attend the meeting. Next, reaching this lower threshold can establish a *credible signal* to small shareholders that their vote during next year's AGM can make the difference. If enough shareholders are triggered by this signal, then these rules may be the solution to the shareholder coordination problem. Yet another possibility is that reaching this threshold imposes sufficiently high reputation or other costs on the blockholder. In the case of the UK rule, it is unclear whether it would pose additional (reputation) costs on the blockholder. On the other hand, the Australian two-strikes rule clearly imposes large costs on blockholders that control the company's board. Nevertheless, these additional thresholds can also increase minority shareholder opportunities to engage in opportunistic behaviour.

Crown Limited with a 46% stake, declared the re-election of the entire board at the spill meeting after a second strike.

[452] Egan Associates (2015) provides more recent data on the Australian two-strikes rule. The authors describe that 11 Australian companies received their first strike during the 2015 AGM season. Mortgage Choice received a second strike as a result of protests against the 100% short-term incentive pay to the former CEO Michael Russell. UGL also received a second strike: 45% of the shareholders voted against the remuneration report. The spill resolution was defeated in both cases. Egan Associates also describes that six companies that received their first strike in 2014 have taken measures to avoid a second strike.

7. CONCLUSIONS AND DISCUSSION

7.1. Conclusions

Small shareholder voting suffers from coordination problems. Since shareholders are able to free-ride on other shareholders' monitoring decisions, few shareholders will exercise their voting rights during AGMs. Thus, large shareholders without a *de jure* controlling stake can become controlling blockholders in practice. We have explored the features of small shareholder voting, using a model that allows for different shareholder preferences. When the willingness to vote is sufficiently high, shareholders can end up in the Pareto efficient equilibrium. And, if small shareholders are not able to block the a blockholder's resolution due to coordination failures, transferring voting rights up to the critical mass from inactive to active shareholders can be optimal. We found that for some parameter values active shareholders will indeed buy (or borrow) the voting rights of the inactive shareholders, but that this solution gives rise to new coordination problems in most cases.

Regulation that facilitates communication between small (active) shareholders is likely to enhance the ability of small shareholders to defeat an opportunistic blockholder and thus reach the optimal outcome. Companies can promote online shareholder communication platforms, either at the company level like the *club des actionnaires* in France, or at the national level, like the *Aktionärsforum* in Germany. Focussing on institutional investors in this respect may also be helpful. Another option is to focus on voting thresholds. We have seen that it is easier for small shareholders to coordinate at a lower threshold, since the critical mass is lower. As a result, qualified majorities also enhance small shareholder voting in situations where they hope to block particular resolution. With respect to director elections, we can point to the new UK Listing Rules (LR 9.2.2AR jo 9.2.2ER) that provides small shareholders with an independent voting poll on independent directors (*cf. supra*, also discussed in chapter 3 of this study). In addition to lowering the threshold in the shareholder voting game, one may also consider adding an additional, lower threshold. The result of reaching this lower threshold may be a lower pay-off for small shareholders (Rule E.2.2 and the Australian two-strikes rule), but such a rule may still stimulate small shareholder voting.

7.2. Discussion and Policy Implications

Corporate governance tools that focus on thresholds, for instance qualified majority rules, but also the new UK Listing Rules (LR 9.2.2AR jo 9.2.2ER) are examples of strong solutions to these coordination problems. However, it is important to note that they may also cause some problems as they may impede decision-making. Moreover, companies are heterogeneous, including in their shareholder structure. A one-size-fits-all corporate governance approach is therefore not suitable. Instead, governments may consider adopting rules for companies with concentrated ownership structures (like the UK Listing Rule) in national corporate governance codes that usually follow the comply-or-explain principle (soft law approach). One may also consider adopting a corporate governance approach like the E.2.2 Rule (UK) or the two-strikes rule (Australia): these rules in fact impose an additional threshold in the shareholder voting game that, when attained, generates a lower payoff to small shareholders. Nonetheless, we recommend that future studies evaluate empirically whether an additional threshold would positively affect voter turnout rates.

Shareholder communication platforms are neither difficult nor costly to implement and may generate large results, but it can be questioned that the existing examples of shareholder

communication platforms are sufficient to foster shareholder coordination. Further research is needed on the particular needs of (small) shareholders regarding these communication platforms to establish their optimal form. Regarding the role of institutional investors, it should be noted that the new Shareholder Rights Directive (adopted in March 2017) will put more emphasis on the long-term engagement of these shareholders with the introduction of, for instance, transparency requirements. The introduction of a rule like principle 6 of the UK Steward Ship Code, which requires institutional investors to vote with 'all shares held', in countries with more concentrated ownership structures may also reduce shareholder coordination problems.

Lastly, it is important to note that the proposed solutions are not only applicable to situations with opportunistic blockholders but are also desirable in cases where small shareholders want to oppose the corporate management in widely dispersed ownership structures.

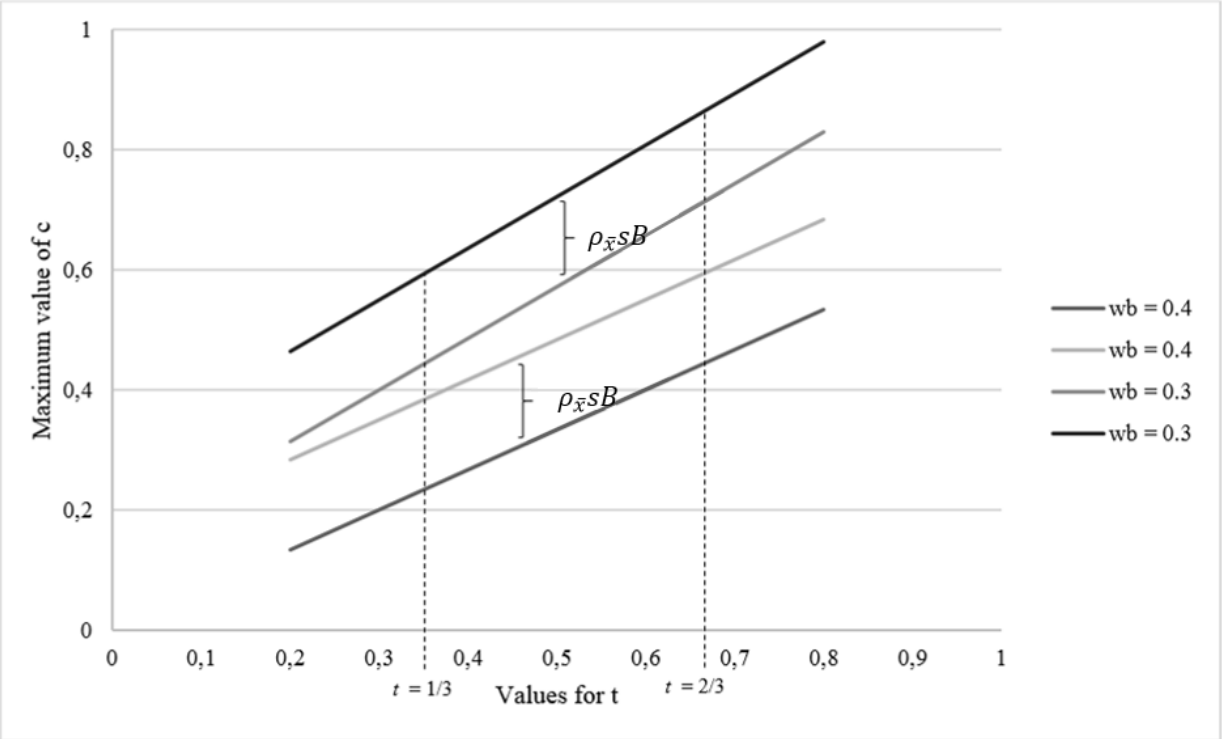
APPENDIX CHAPTER 5

A.1. Maximum Cost Amounts

In this appendix we show the maximum amounts of *c* for each value of *t* (when w_b = 0.3 and 0.4). When $\rho_{\bar{x}} \neq 0$, the curves in this figure will shift upwards with $\rho_{\bar{x}} sB$, thereby increasing the maximum level of cost *c* for which the small shareholders are able to defeat the opposition. In this figure we have set the value of $\rho_{\bar{x}} sB$ equal to 0.15, but this is a completely arbitrary amount (shown as the upper-curve for each w_b).

FIGURE A.1.

Maximum Amounts of c for Given t (wb= 0.3 or 0.4, $\rho_{\bar{x}}$ = 0 or > 0)



Note: this figure shows the maximum values of *c* for different values of *t* so that small shareholders are able to defeat the blockholder (holding either a stake of 40% or 30%). The expected benefits from voting, besides *t*, $\rho_{\bar{x}} sB$, are set at a value of 0.15 (which is arbitrarily).

CHAPTER 6 - SHAREHOLDER DIALOGUE: ASSESSING THE RELEVANCE OF DUTCH AGMS

ABSTRACT

In this chapter we are among the first to investigate the actual course of affairs in AGMs with respect to shareholder forum rights. In the first part of the chapter we provide descriptive statistics on the use of the right to ask questions and speak in AGMs in the Netherlands. We find that in an average meeting there are around 42 questions and remarks made by around 8 shareholders. Most of these questions and remarks seem to be relevant: with a categorization framework of 14 topics we could already identify over 50% of these questions and remarks. We also find that private investor interests in these 14 topic categories generally reflect those of the entire shareholder base. Next, we consider the determinants of the use of these forum rights. In several panel data analyses with a Poisson distribution and a negative binomial distribution we, inter alia, found that the 'importance of the meeting' generally contributes to the amount of questions and remarks and the number of shareholders that actively engage in discussions. We have also found that the number of speakers – and the number of private investors – that actively attend the AGM depends on previous attendance numbers. This may imply that there is a small base of very active (private) investors in the Netherlands. We conclude that the forum function of AGMs is definitely relevant.

1. INTRODUCTION

As discussed in the introduction, the role of the AGM can be divided into three functions. In this chapter we evaluate one of these functions in particular; the forum function. As we have seen in the first chapter, the right to ask questions was implemented at the European level with the Shareholder Rights Directive, although many countries provided this right already before the implementation of this Directive.[453] Whereas larger shareholders and particular types of shareholders such as institutional investors often have the opportunity to engage in one-on-one meetings with the corporate board (e.g., Van der Elst, 2011; Tiemstra and De Keijzer, 2008), the AGM is generally the *only* place for smaller shareholders, including private investors, to ask their questions and voice their concerns.[454] The forum function of the AGM thus contributes to the ability of *all* shareholders to make informed decisions on the proposals that are on the agenda.

Although the forum function seems to be important on paper, scholars have criticized this function of AGMs, arguing that these meetings generally lack a meaningful dialogue and that relevant issues are usually not discussed (for instance, see Klaassen, 2011[455]; Short and Keasey, 1999). Minority shareholders are often considered the cause of these problems.

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[453] One may note that there is no similar provision in US law, but it is common practice to have discussions and questions. See Pinto (2008).

[454] We have seen that in France, shareholders – acting individually or in concert – that hold at least a certain stake are able to submit written questions to the chairman of the (management) board regarding the operations of the company or its subsidiaries at all times ex article L.225-231 jo L.225-120 FCC. The questions must be answered within a month ex L.225-231(2) and the reply must be sent to the registered auditor as well. If the questions are not (satisfactorily) answered, shareholders may require the appointment of one or more experts. The requirements for these stakes are: 5% of the voting rights for capital less than 750,000 euros; 4% for over 750,000 euros and up to 4,500,000 euros; 3% over 4,500,000 euros and up to 7,500,000 euros; 2% over 7,500,000 euros and up to 15,000,000 euros; 1% over 15,000,000 euros (*cf. supra*, chapter 1, section 4.1). This law does not exist in the Netherlands.

[455] Klaassen starts by stating that everyone who has ever been to one or more (Dutch) AGMs probably has wondered whether such a meeting cannot become more efficient. She notes that many shareholders make use of their right to speak during AGMs, which per Klaassen leads sometimes to questions and other

Despite these criticisms, scholars have remained rather silent about what actually happens at AGMs. Only very few scholars (to our knowledge) have discussed some empirics in the past. As we have seen in the introduction chapter, Shilling (2001) studies the results from around 100 interviews with supervisory board members of large German corporations and Apostolides (2007) discusses the actual course of affairs during 22 AGMs in the UK since 2001. In addition, Van der Elst (2012) investigates the questions that were asked during the 2011 AGMs of 81 listed companies in the Netherlands. He concludes that the right to ask questions is of importance to small private shareholders and their representatives. De Jong, Mertens and Roosenboom (2003) investigate 245 AGMs of Dutch companies that are part of the AEX-25 or AMX-25 in the period 1998-2002 and find that on average around ten shareholders speak in these AGMs. Accordingly, they conclude that only few shareholders use their right to speak in practice. The authors also find that most questions are regarding the strategy of the company. During the 2002 AGMs more questions were asked about the auditing, which, according to the authors, can be explained by the large accounting scandals in that period. Klaassen (2011) briefly evaluates the duration of Dutch AGMs, and finds that Dutch meetings take on average 2 hours and 43 minutes: the shortest took 15 minutes and the longest 8.5 hours (she explains that this was the 2008 Fortis EGM to inform the shareholders of the state interferences at the time). She concludes that limiting the speaking time of shareholders will not be necessary in a large majority of the cases (p. 74). Next, in an early empirical study on Belgian AGMs, Van der Elst and Wymeersch (1997) investigate the use of the right to ask questions using a questionnaire (65 companies, including 17 listed companies). The authors find that shareholders have used this right at 75% of the AGMs in their sample. Most questions concern the board's report or 'general questions' (p. 83). Most questions were asked by '*andere natuurlijke personen*', including private investors. Institutional investors asked questions in the AGMs of around 30% of the companies.

The objective of this (at least to some extent) pioneering research is, first, to reveal what actually happens at AGMs. We investigate how, and to what extent, shareholders make use of their forum rights in the Netherlands. To do so, we investigate the meeting documents for a sample of Dutch AEX-25 and AMX-25 companies for the years 2004-2015 (unbalanced panel data set, *cf. infra*, table 1, section 2.1). The DCGC 2008 (as well as the 2003 version) provides the opportunity to study these questions, as it requires companies to provide the shareholders, upon request, with the 'report' of the general meeting (Principle IV.3.10). There is no specific obligation for companies to disclose this information to the public. It is nonetheless common practice for companies to upload detailed minutes on their websites. We show our descriptive findings and develop a categorization framework to investigate the content of the meeting documents. We also consider whether the factors that contribute to the turnout decision of (small) shareholders (*cf. supra*, chapter 3 of this research), also drive the use of the shareholder forum rights, to see whether the AGM's forum function is relevant or not.

1.1. Dutch Law

Dutch law already granted the right to ask questions in AGMs (article 2:107(2) DCC) prior to the implementation of the Shareholder Rights Directive (since 1971), which enables us to begin our

remarks that are not (entirely) related to the agenda, such as questions regarding parking tickets and lunch, which, according to Klaassen, may harm the good course of AGMs.

sample period a. few years before the introduction of this Directive.[456] Article 2:117(1) DCC provides individual shareholders with the general right to speak during general meetings. Article 2:107(2) DCC stipulates that the management board and supervisory board shall provide the AGM with all requested information, unless a substantial company interest opposes to this. Although this provision does not explicitly state that this right belongs to individual shareholders, we have seen in chapter one that it is the consensus among Dutch scholars that this right indeed belongs to individual shareholders, at least after the implementation of the Shareholder Rights Directive under Dutch law (*ASMI*-case, *Hoge Raad* 9 July 2010, *JOR* 2010, 228, *cf. supra*, chapter 1, section 4.1). It follows from our data that it was already common practice before the implementation as well. With the implementation of the Shareholder Rights Directive (2007/36/EC), the Dutch legislature gave an example of a 'substantial interest' to show that these terms have the same meaning as the grounds for refusal in the Shareholder Rights Directive: information that may harm the competitiveness of the company.[457] Whether or not the term 'substantial interest', should be interpreted in a broad or narrow way is not entirely clear. Scholars generally argue that the refusal of an answer should only be exceptional,[458] which is in line with practice in the UK.

We have also seen that article 2:107(2) DCC does not limit the right to ask questions to the meeting agenda items in contrast to the Shareholder Rights Directive. In the *ASMI*-case, the Dutch Supreme Court (*Hoge Raad*) ruled that shareholders may also ask questions that are not related to the meeting's agenda (*Hoge Raad* 9 July 2010, *JOR* 2010, 228).[459]

There are no legal provisions under Dutch law that explicitly allow the chairman to limit shareholder question rights, in contrast to German law (*cf. supra*, chapter one, section 4.1.).[460] The role of the chairman is not defined in the DCC either. Klaassen (2011, p. 67) argues that the chairman of the AGM, in accordance with standards of reasonableness and fairness, can limit shareholder speaking time during the meeting. In an earlier version of the revised DCGC (2008), the Corporate Governance Committee proposed provision that included the explicit authority of the chairman of the meeting to limit the speaking time of shareholders (*cf. supra*, section 4 of chapter 1). In the consultation round some concerned parties opposed this provision, including the VEB ('Association for Securities Holders', also see Klaassen, 2011, p. 69). One of the arguments against the proposed provision was that, according to the VEB, there has not been any investigation on which this proposal is based (VEB, 2008, p. 8). However, as we discussed in chapter 1, the provision was not adopted in the final version of the DCGC 2008 as there was no need for it (Nowak, 2009).

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456 For a more extensive overview of the Dutch law one may refer to chapter 1 of this research.

457 This example is in line with the 'business interests' as mentioned in the Shareholder Rights Directive. *Kamerstukken* II (2008-2009) 31746, nr.3 (*Memorie van Toelichting*), p. 15.

458 For example, one may refer to Van Solinge and Nieuwe Weme (2009), no. 327.

459 In practice, however, most questions will concern the meeting's agenda anyway. As we have seen in chapter 2 and 3 of our research – agendas usually contain several voting and discussion items, including the discussion of the annual report, which in turn covers a broad range of topics (including for example the remuneration report, corporate social responsibility topics, etc.).

460 In an earlier version of the revised DCGC 2008 the provision specifically included the chairman's power to limit shareholder speaking time. In a later stage this provision was again removed. Nowak (2009) claims that this provision was not important, as it prescribed common practice.

1.2. Outline of this Chapter

The chapter continues as follows. First, we outline our research method and explain our sample selection in section 2. In section 3 we conduct a descriptive study, and investigate the number of questions and remarks, the types of shareholders that actively participate in AGMs, and the content of the questions and remarks for our sample of Dutch AGMs. Afterwards, in section 4 we consider the factors that may contribute to the use of forum rights of (private) shareholders in several count data models. Section 5 provides conclusions and a discussion of policy implications.

2. SAMPLE SELECTION AND RESEARCH METHODOLOGY

2.1. Research Sample

Part of our research involves some text mining techniques. As a result, we included meeting documents in only one language (Dutch) in our sample.[461] The sample consists of those companies that cumulatively complied with the requirements that; i) the company be listed in the Netherlands either at the AEX-25 or AMX-25 for at least one year in the period 2004-2015, and; ii) the company discloses a Dutch version of the minutes of the general meeting for at least one year between 2004 and 2015. We gathered the meeting documents from the company websites, contacted investor relation departments and used Van der Elst's database. Eventually, 78 companies fulfilled the aforementioned sample requirements, which resulted in a sample of 556 AGMs. These companies and the years for which the documents are available are listed in table 1.

[461] Dutch meeting documents provide us with the largest sample size, and those are the ones we choose to analyse. Lately, some large Dutch listed companies have started to publish the minutes of their AGMs in English. Other, more international companies such as RELX and Heineken have already been publishing their documents in English for quite some years. However, a large majority of Dutch listed companies still publish their meeting documents (also) in Dutch.

TABLE 1

Sample of AEX and AMX companies (2004-2015)

#	*Company*	*Years*	#	*Company*	*Years*
1	Aalberts Industrie	2008-2015	40	Nedap	2011, 2015
2	Accell Group	2007-2015	41	Neways	2004-2015
3	Acomo	2015	42	Nieuwe Steen Investments	2008-2010, 2012-2015
4	Aegon	2004-2015	43	Nationale Nederlanden	2015
5	Ahold	2008-2009, 2011-2013, 2015	44	Nutreco	2004-2009, 2013-2015
6	Ajax	2005-2008, 2014	45	OCE	2005-2009
7	Arcadis	2004-2007, 2010-2015	46	Oranjewoud	2008, 2010-2015
8	ASM International	2006-2015	47	Ordina	2004, 2006-2015
9	Ballast Nedam	2004-2015	48	Pharming Group	2009-2015
10	BAM Groep, Koninklijke	2004-2015	49	Philips	2004-2015
11	Batenburg	2007-2015	50	Post NL	2010-2015
12	Beter Bed	2007-2015	51	Qurius	2004-2009, 2011-2013
13	Binck Bank	2009-2015	52	Randstad	2008-2015
14	Boskalis Westminster	2007, 2009-2015	53	RotoSmeets	2004-2009
15	Brunel International	2005, 2007-2015	54	Royal Delft	2011-2015
16	Corbion (CSM)	2010-2015	55	Royal Imtech	2004-2014
17	Corio	2004-2008 2010, 2011, 2014	56	SBM Offshore	2008-2013
18	CTAC	2005-2007, 2010-2015	57	Sligro Food group	2007-2015
19	CVG	2004, 2006-2009	58	SNS Reaal	2007-2012
20	Delta Lloyd	2010-2015	59	Spyker	2005
21	Docdata	2006-2015	60	Stern	2009, 2013-2015
22	DPA	2010-2015	61	Super de Boer	2004-2009
23	DSM	2005-2015	62	Ten Cate	2005-2015
24	Eurocommercial Properties	2007-2013	63	TKH Group	2008-2015
25	Exact Holding	2005-2014	64	TNT	2009-2011
26	Fugro	2007-2015	65	TNT Express	2012-2015
27	Gamma	2004-2010	66	TMG	2005-2009, 2011, 2012-2013, 2015
28	Grontmij	2005, 2008-2015	67	TomTom	2015
29	Groot Handelsgebouw	2008, 2010-2014	68	Unilever	2009
30	Heineken	2008-2011, 2013-2015	69	Unit4	2007-2010, 2012-2013
31	Holland Colours	2006-2011, 2013-2015	70	USG People	2004-2010, 2012-2015
32	ICT Aut	2004-2015	71	Value8	2007-2012, 2014-2015
33	ING	2004-2012	72	Vastned Retail	2008-2015
34	Kasbank	2010-2014	73	Vopak	2008-2015
35	Kendrion	2008-2015	74	Wavin	2008, 2009
36	Koninklijke Brill	2008, 2011-2015	75	Wegener	2004, 2006, 2008, 2009
37	KPN	2008-2015	76	Wereldhave	2007-2015
38	Lucas Bols	2015	77	Wessanen	2006-2008, 2010-2015
39	Macintosh	2008-2015	78	Wolters Kluwer	2005-2015

The panel data set used in this chapter is unbalanced as shown in table 1. We have in total 78 different companies over a 12-year period (T=12). The mean period of the companies in our sample is 8.5 years with a standard deviation of 2.4 and a median of 8.

2.2. Methodology

In this part of the research, we investigate how and to what extent the shareholder's right to ask questions and to speak in AGMs is used in practice. Although this may sound rather straight forward, there are several complications.

First, questions and remarks are often hard to differentiate and are usually just a matter of framing.[462] For example, shareholders may make several remarks to introduce their question. Also, consider the following example of a remark that was made in the 2007 AGM of ING NV: '*[aandeelhouder] suggereert in dit verband dat het opkomst percentage ook kan worden verhoogd door de AVA-vergaderingen van de verschillende beursfondsen beter te spreiden*' (translation: [shareholder] suggests that, in this context, the turnout rate could also be increased if the AGMs of listed companies are planned on more different dates). Although formally, a suggestion is not a question, the chairman of the meeting gives this shareholder an answer.[463] This, but also because remarks are an important instrument for shareholder voice and the Dutch forum right also involves the right to speak, has led us to decide to consider both questions and remarks.

The second complication has to do with follow-up questions and remarks. Since some follow-up questions and remarks may include requests for clarification or address the incompleteness of a provided answer, while others may address a different aspect following an answer, we cannot record every follow-up remark or question in the same way. Moreover, follow-up questions (and remarks) may also be posed by other shareholders. In order to process the data as soundly as possible, we followed the following rules: i) follow-up questions and remarks without any new elements[464] are considered to be the same question or remark: the text of these follow-up questions and remarks is added to the case of the initial question or remark; ii) follow-up questions and remarks that address a new element, which was not discussed in the initial question or remark, are processed as a new entry; and iii) follow-up questions and remarks by a shareholder other than the shareholder that posed the initial question or made the initial remark are always considered as a separate question or remark. Lastly, shareholders or proxy holders voting statements without any explanation or argumentation whatsoever are not considered as a question or remark.

Our main data sources, i.e., the minutes of the AGMs, also entail some complications: whereas some minutes contain the recordings of the meeting, others are merely a summary of what has been said and asked. Only in the first case does our data contain the full quotes of the shareholders. Although part of the research in this chapter focuses on the content of the questions and remarks (*cf. infra*, section 3.2), this has no large impact on our results as we chose to analyse the data based

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462 In this regard, one may refer to the opinion of the BGH (*cf. supra*, chapter 1): Regarding the distinction between the right to ask questions and the right to speak, the BGH concluded that this is not necessary according to the wording of the law and the aim of the legislature (paragraph 31 of the verdict), and in practice such a distinction would not be easy: '*Angesichts dieser Abgrenzungsproblematik ist es nicht nur zulässig, sondern sachgerecht, die Einschätzung und eine ggf. entsprechend abgestufte Behandlung dem pflichtgemäß auszuübenden Ermessen des Versammlungsleiters im konkreten Einzelfall zu überlassen*' (paragraph 32 of the verdict). Case *Karl-Walter Freitag/Biotest AG* (2010).

463 Whereas remarks are often treated as questions, sometimes, for example the 2004 ING NV AGM, remarks do not receive any response.

464 These 'any new elements' are subject to the author's considerations, and, unfortunately, are thus subject to the author's choice by nature. One may note that these (text) data (or data whatsoever) are always biased at least to some extent (in this respect one may also refer to the 'closure principle', Van Steen, 2016).

on keyword categorization. In our categorization framework we distinguish 14 different topics for shareholder questions and remarks (displayed in table A.1 of the appendix). In section 3.2.2 we further explain this framework.

In our analyses in the next sections we also consider different types of shareholders, which we divide in different categories. Three common shareholder associations usually ask questions on behalf of private shareholders. These are: VEB, VBDO ('Association for investors of sustainable development') and Stichting rechtsbescherming beleggers ('Foundation legal protection investors'). Besides these three shareholder organisations, we also include the category 'institutional investors and other funds', which includes banks, pension funds, investment funds and insurance companies, asset managers and other financial institutions or portfolio investors (same category as used in chapter 2 and 3). Since the forum right is aimed at *all* shareholders we also evaluate its use by private investors.

In section 4 of this chapter we conduct several panel data models to determine which factors contribute to the use of shareholder forum rights. We use the Poisson distribution and censored models. In this section, we discuss these models, including the dependent and independent variables that we consider. In the next section we first provide descriptive information about the use of these forum rights. From now on, when we refer to 'questions' in our empirical analysis, we mean all questions, remarks, and follow-up questions and remarks as explained in this section (see also table 6 of this chapter).

3. DESCRIPTIVE ANALYSIS OF THE FORUM RIGHT

In this section we provide a descriptive analysis of the use of forum rights by different types of shareholders. In the next section we consider the number of questions and remarks that are posed or made by shareholders. Then, in section 3.2, we evaluate the topics that are discussed, including some remarkable dialogues.

3.1. Questions

In the 566 AGMs that we investigated an average 8.3 different shareholders asked 42.1 questions on average (standard deviations are respectively 4.1 and 21.3). This average amount of speakers is somewhat lower than the numbers reported in the study of De Jong, Mertens and Roosenboom (2003). Following these authors, we can also conclude that not many shareholders make use of their right to pose questions during AGMs in the Netherlands. However, shareholders that do use this right usually ask several questions. The total number of questions for all our observations is 23,845. In table 2 we display the average number of questions, and the number of different shareholders that posed these questions or made these comments per year.

TABLE 2

Average amount of questions and remarks per year

Year	# *AGMs in sample*[465]	*Total # of questions*	*Mean # of questions and remarks* (s.d between parentheses)	*Sample range*	*Mean # of shareholders* (s.d between parentheses)	*Sample range*
2004	19	998	52.5 (27.2)	[18,131]	9.5 (6.4)	[3,30]
2005	26	1030	39.6 (21.8)	[8,104]	8.5 (4.8)	[2,21]
2006	31	1350	43.5 (24.9)	[10,143]	8.3 (4.6)	[2,25]
2007	42	1531	36.5 (19.1)	[11,106]	7.4 (3.5)	[1,17]
2008	57	2410	42.3 (24.0)	[12,133]	8.2 (4.1)	[2,23]
2009	57	2454	43.1 (19.4)	[15,108]	9.0 (5.0)	[3,33]
2010	56	2345	41.9 (22.1)	[0,90]	8.3 (4.1)	[0,23]
2011	54	2198	40.7 (16.7)	[15,91]	8.4 (4.0)	[2,27]
2012	55	2200	40.0 (16.7)	[14,99]	8.1 (4.3)	[1,28]
2013	58	2747	47.4 (28.1)	[14,205]	8.6 (3.8)	[2,27]
2014	55	2173	39.5 (16.5)	[14,76]	7.9 (3.2)	[1,17]
2015	56	2409	43.0 (19.5)	[7,102]	8.4 (3.5)	[2,20]

Table 2 shows that the average number of questions was the lowest in 2007 with 36.5; 2004 was the year with the highest average number of questions with an average amount of over 50, but the sample size is the smallest for this year and the standard deviation is rather high. In fact, all standard deviations are rather high (between 16.7 and 28.1 for all years), which indicates that there is large variation in the use of the question right among companies. When we look at the sample range reported in column four of table 2, we see that there are some notable outliers (for instance, we recorded 205 questions of one the AGMs in 2013). In section four we evaluate which factors contribute to this large variation. Next, we consider the number of shareholders that actively

[465] Since we consider all companies that are listed for at least one year at either the AEX-25 or the AMX-25 the number of companies per year in our sample can be higher than 2 times 25 (*cf. supra*, section 2.1).

participate in the AGMs. Table 2 shows that the mean is around 7 to 9 on average. The ranges that are reported in the table show us that the highest number of shareholders that actively participated in the AGM was 33. At the 2010 Rotosmeets AGM none of the shareholders made use of his forum rights. We also discern a large variation among the observations for the number of speakers, a phenomenon we will further investigate in the fourth section.

We also consider the variation among the companies in our sample. We noted that the ING NV AGMs were rather active, as on average almost 23 different shareholders engage in discussions, whereas shareholders were relatively inactive at the DPA Group NV AGMs (around 3 shareholders engage in discussions on average). Shareholders at Ahold NV, KPN and Royal Imtech AGMs were also relatively active (over 13 different shareholders pose questions on average in these meetings). In contrast, at USG People NV, Value8 NV and Rotosmeets NV meetings relatively few shareholders engage in discussions (all less than 5 shareholders on average).

Next, we look at the type of shareholders that are active at AGMs. Table 3 shows the average number of questions per AGM per type of shareholder. The last column shows the average number of different private investors who asked one or more questions at the AGMs in our sample. One may note that the standard deviations (which are shown between parentheses) are quite high. For example, the average number of questions per meeting posed by private investors for the entire sample is 16, but the standard deviation is 13, which indicates a large variation between observations. The average number of private investors who pose questions or have marks in AGMs is around 5 for our entire sample (with a standard deviation of 3.3). As we have seen, the average number of shareholders (all types) that pose questions and/or make comments is 8.3 for our entire sample. This indicates, that, on average, at least half of the shareholders that speak during these meetings are private investors. However, since the average amount of questions is 42.2, we also know that, on average, these private investors ask less than half of all the questions during the meetings. As table 3 indicates, the VEB, as a representative of many other shareholders, actively uses its right to speak at the AGM in the Netherlands. Institutional investors and other funds are also relatively active in AGMs with an average number of questions of 6.5 for the entire sample period.

TABLE 3

Average amount of questions and remarks per type of shareholder (s.d between parentheses)

Year	*VEB*	*VBDO*	*Stichting Rechtsbescherming beleggers*	*Institutional investors and other funds*	*Private investors*	*# private investors*
2004	14.6	1.7	2.2	10.6	23.7	6.5
	(10.5)	(2.5)	(4.6)	(13.5)	(17.5)	(4.6)
2005	11.8	1.5	2.3	5.9	15.5	5.2
	(10.2)	(2.5)	(5.8)	(6.8)	(10.6)	(3.9)
2006	13.0	1.5	3.5	5.5	17.0	5.0
	(11.7)	(2.3)	(6.4)	(7.3)	(13.4)	(3.4)
2007	11.4	1.1	1.6	7.3	13.7	4.2
	(6.3)	(2.6)	(4.1)	(12.6)	(11.0)	(2.7)
2008	12.1	1.6	2.3	10.4	17.2	4.9
	(7.1)	(3.4)	(4.2)	(22.1)	(16.5)	(3.8)
2009	11.2	3.5	3.1	8.2	17.2	5.2
	(5.3)	(5.0)	(5.1)	(11.3)	(12.4)	(3.6)
2010	12.1	3.9	2.8	4.9	14.7	4.7
	(8.1)	(4.2)	(5.2)	(8.6)	(12.3)	(3.4)
2011	12.6	3.5	3.6	6.5	13.8	4.5
	(8.5)	(3.1)	(5.4)	(10.0)	(12.0)	(3.2)
2012	12.9	4.1	3.0	4.5	14.4	4.1
	(8.2)	(3.3)	(5.0)	(7.9)	(11.6)	(3.5)
2013	13.5	4.4	3.0	5.6	16.8	4.7
	(8.3)	(3.9)	(5.0)	(8.0)	(14.5)	(2.9)
2014	12.1	3.8	3.0	4.5	15.1	4.8
	(8.6)	(3.9)	(4.6)	(8.2)	(12.1)	(3.1)
2015	11.6	2.6	3.1	5.5	16.6	4.7
	(7.4)	(2.7)	(4.5)	(10.0)	(11.6)	(2.8)
Total	12.3	3.0	2.8	6.5	15.9	4.8
	(8.1)	(3.7)	(4.9)	(11.5)	(13.0)	(3.3)

Note: the table shows the average number of questions and remarks and standard deviation per type of shareholder per meeting (columns 'mean') and the average number of private shareholders that posed questions or made comments during the meetings (column '#').

The AGM offers *every* shareholder the opportunity to ask questions and speak. Table 3 provides us with some important insights into this matter. First, the table shows that of all types of shareholders, private investors ask most of the questions in the AGMs in our sample: the sample average for private investors is 15.9. Since the average number of questions is 42.1 in our sample, more than one third of the questions stem from private investors. Moreover, representative organisations of smaller shareholders, including the VEB, VBDO and Stichting Rechtsbescherming Beleggers, comprise a large part of the remaining questions. Our analysis also shows that around 5 private investors effectively make use of their forum rights in the AGM on average, which is more than half of the sample average of 8.3. These results show that the AGM forum function is most important to the small shareholders and their representatives, which

accords with the fact that the AGM is usually the only opportunity for these small shareholders to voice their concerns and ask questions.

3.2. Discussion Topics

3.2.1. Discussions in Dutch AGMs

Next, we consider the topics discussed at the AGMs. As we have seen, one of the main criticisms is the lack of relevant questions by, most of all, small private investors (*cf. supra*, introduction chapter). We recognize that during some meetings, small shareholders indeed ask questions or make remarks that are not related to the business and governance of the company or the AGM. An example of such a remark can be found during the 2015 Ballast Nedam AGM: one of the shareholders complimented the chairman of the meeting and expressed his wish that he personally does not have to do as much reading for his grandchildren as the chairman had to do during the AGM. Considering that the results in the previous section showed us that there are on average 40 questions and/or remarks per AGM, in general, a question about the parking tickets, or a friendly remark about one's grandchildren, will not have a large – if any – detrimental impact on the course of affairs during an AGM in our opinion. And, if in a particular case the course of the meeting is likely to be interrupted, the chairman of the meeting generally has the ability to interfere. For instance – and this was the only case that we encountered for our entire sample – at the 2015 Binckbank AGM the chairman denied a private investor the right to speak: during this meeting, an individual shareholder made some personal, emotional complaints regarding a certain Binckbank product. The chairman threatened to suspend the meeting and to have this shareholder removed. After some remarks from both sides (for instance: '*het is een ballentent hier, dit is geen klanttevredenheid*', translation: 'this is a snobby firm, this is not customer satisfaction', or '*natuurlijk, maar meneer [bestuurder], gooit alles in de prullenmand*', translation: 'of course, but Mr [director] throws it all away'), the meeting was resumed. Other issues, such as questions and remarks of employees that also bought (one or more) shares are generally, though sometimes briefly, answered (as is the case at Ahold and Heineken AGMs).

We also noted that at a few AGMs the chairman of the meeting indicated (beforehand) that the number of questions per shareholder was limited or asked shareholders to pick just a few questions (for instance, the 2009 BAM AGM). This request was usually addressed to the representatives of the VEB and VBDO: as table 4 shows, the VEB poses most questions of all shareholders on average. Individual shareholders were asked to limit their speaking time on only two occasions, at the 2006 and 2011 Aegon AGMs. In only two AGMs an individual shareholder requested the limitation of speaking time: this was the case during the meetings of Aegon in 2006 and 2011. Although chairmen at Dutch AGMs can limit shareholder speaking time, such a provision is not implemented under Dutch law, our analysis agrees with Klaassen's (2011): limiting shareholder forum rights is not a major issue in practice.

Although Van Solinge and Nieuwe Weme (2009) argue that a refusal to answer should only be exceptional (*cf. supra*, chapter 1), answers were refused on several occasions. An example is the 2010 ASMI AGM: during this meeting, the representative of the VEB wanted to ask the external auditor a question. The chairman of the meeting prohibited him from asking a question regarding the

management of the IT-system.[466] One may note that shareholders in the Netherlands do not have the (formal) right to address questions to the external auditor. As we have seen in chapter one, Belgium is the only Member State that grants this right (of the seven Member States that we investigate in this research).[467]

3.2.2. Categorization Analysis

In order to evaluate the relevance of the content of Dutch AGM discussions we introduce a categorization framework. The complete categorization framework can be found in table A.1 of the appendix to this chapter. We distinguished 14 different topic categories for questions and remarks. These categories are: annual report, audit, board elections, capital, corporate governance, discharge, diversity, dividend, language, legal, protection mechanisms, remuneration, strategy, and sustainability. These categories involve topics related to the agenda items (as we have seen in chapter 1), including annual report, audit, board elections, capital, discharge, dividend, and remuneration. Next, the categories corporate governance (more general category), diversity, sustainability, and protection mechanisms contain common subjects in the field of corporate governance. The category 'legal' contains keywords related to court proceedings and other procedures. Lastly, the category 'language' contains keywords that are related to the language used in the AGM and/or the annual report. As table A.1 shows, we use several keywords for each category. For each category we composed a list of keywords to analyse using text mining techniques. We identified the number of questions that contained one or more of these keywords (every question or remark was recorded once per category if one or more of the keywords from that category was included in the text of this question or remark).

In addition to these 14 categories, we also analyse the tone of voice of shareholders during the meetings, using the categories 'positive' and 'negative', as shown in table A.2 of the appendix. The 14 topic categories are necessarily incomplete in terms of relevant topics and in terms of the keywords included in each of them. When a question or remark is identified, and belongs to one (or more) categories, this does not mean that this remark or question is relevant *per se*. However, it provides at least an *indication* that the question is likely to concern a relevant matter.

Below we outline the findings of our analyses. We consider the occurrence of the topic categories per type of shareholder in table 4. The 14 categories together (denoted by 'all', not including 'negative' and 'positive') already cover 54% of all questions at the AGMs (last column table 4). Since the keywords contained in these categories are necessarily incomplete, and we only consider 14 categories, we expect there to be far more relevant questions than these numbers cover.

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[466] Note that this case involves the external auditor. Other examples are, *inter alia*, the 2013 ASMI AGM and the 2008 Brunel AGM. In the 2013 ASMI AGM the chairman of the meeting refused to answer a large blockholder representative. The chairman stated that: '*ik denk dat u met het noemen van namen ver buiten uw normale gang van zaken gaat. Het is aan de Raad van Commissarissen statutair om haar voorzitter te benoemen en als u nu denkt als achttienprocentaandeelhouder om de Raad van Commissarissen te dwingen in een bepaalde richting, dan denk ik dat u buiten de orde bent*' (translation: 'in my opinion you are far beyond your regular course of affairs by mentioning names. The supervisory board appoints its chairman and if you might think that being an 18%-shareholder allows you to force the supervisory board into a particular direction, then I think you are way out of line'). And during the 2008 Brunel AGM the representative of the VEB was not allowed to ask the external auditor any questions regarding the remuneration policy. However, as of the 2009 Brunel AGM the representative of the VEB was allowed to ask the external auditor about the remuneration report.

[467] Ex article 540 WvV (registered accountants, in Dutch: 'commissarissen').

Furthermore, we note that the 14 categories in total (denoted by the category 'all'[468]) are more frequently discussed by the private investors (with an occurrence of 4,201) than by the VEB (4,020). When we relate these numbers to the total number of questions, we see that 46.6% of the total number of questions by the private investors' concern one of these categories (*cf. infra*, table 5); for the VEB this is 57.9%. In addition to the strategy and the annual report, director remuneration and dividend are the most frequent subjects of discussion among private investors. Interestingly, institutional investors discuss remuneration almost as often as the strategy: 227 times versus 269.

[468] The category 'all' indicates the case occurrence for all fourteen categories. If in a particular question or remark more topic categories are considered, we only count this particular question or remark once.

TABLE 4

Occurrence of topic categories per type of shareholder

Topic category	*VEB*	*Stichting rechtsbescherming beleggers*	*VBDO*	*Private investors*	*Institutional investors and other funds*	*other*	*total*	*%*
All	*4020*	*789*	*1370*	*4201*	*1982*	*512*	*12,874*	***54.0***
Annual report	678	155	254	827	396	103	2,413	**10.1**
Audit	512	85	51	373	119	17	1,157	**4.9**
Capital	122	28	11	124	85	18	388	**1.6**
Corporate governance	277	6	111	81	199	29	703	**2.9**
Discharge	119	10	81	113	69	20	412	**1.7**
Diversity	12	4	99	63	8	5	191	**0.8**
Dividend	172	80	8	538	124	59	981	**4.1**
Election	241	77	31	241	118	32	740	**3.1**
Language	44	19	7	125	13	10	218	**0.9**
Legal	128	20	11	138	33	26	356	**1.5**
Negative	583	131	92	770	259	87	1,922	**8.1**
Positive	1417	256	505	1742	927	230	5,077	**21.3**
Protection	225	46	18	221	137	75	722	**3.0**
Remuneration	609	23	209	516	328	46	1,731	**7.3**
Strategy	2126	398	609	1925	1094	253	6,405	**26.9**
Sustainability	219	28	1075	372	181	51	1,926	**8.1**

Note: the total number of questions per category of shareholders is 6,943 for the VEB; 1,702 for VBDO; 1,612 for Stichting Rechtbescherming Beleggers; 3,651 for all institutional investors and other funds; 9,012 for private investors, and; 879 for the others (all shareholders not included in one of the aforementioned categories, including labour unions etc. The percentages in the left-hand column are calculated by dividing the amounts in the column 'total' by the total amount of questions and remarks in our sample (23,799).

We can conclude that shareholders generally care about – besides the more general categories 'strategy' and 'annual report' – executive remuneration: with our categorization we identified that at least 7.3% of all questions were related to this category. Sustainability is another rather important topic (8.1%), but one of the shareholders' representatives, VBDO, focuses largely on these matters.

Next, we compare the percentage of private investor questions that fall into in one of the 14 categories with those of all shareholders in table 5. The results show that private investors on average care more about the dividends (6% compared to 4.1%), and are generally more negative (8.5% compared to 8.1%). They also care more about the language (i.e., Dutch or English) that is used, for example in the annual report or in the meeting. Private shareholders are generally less interested in sustainability (only around four% of the questions, which is 50% less than the average shareholder base) and corporate governance matters compared to the entire shareholder base (only around 1%, which is almost 70% less). We also note that private shareholders ask questions as much about remuneration matters as about dividends.

TABLE 5

Occurrence of topic categories per type of shareholder (all and private)

Category	*All shareholders (%)*	*Private investors (%)*	*Percentage difference*
All	54.0	46.6	-13.7
Annual report	10.1	9.2	-8.9
Audit	4.9	4.1	-16.3
Capital	1.6	1.4	-12.5
Corporate governance	2.9	0.9	-69.0
Discharge	1.7	1.3	-23.5
Diversity	0.8	0.7	-12.5
Dividend	4.1	6.0	46.3
Election	3.1	2.7	-12.9
Language	0.9	1.4	55.6
Legal	1.5	1.5	0.0
Negative	8.1	8.5	4.9
Positive	21.3	19.3	-9.4
Protection	3.0	2.5	-16.7
Remuneration	7.3	5.7	-21.9
Strategy	26.9	21.4	-20.4
Sustainability	8.1	4.1	-49.4

Note: the third column ('Private investors (%)') is calculated by dividing the amounts of table 4 by 9,012 (i.e., the total amounts of questions and remarks by private investors in our sample).

Figure 1 (below) shows the development of topic categories over time for the entire shareholder base. The percentages that are shown are calculated based on the number of questions in the category 'all' (which is 12,874, *cf. supra*, table 4).

FIGURE 1

Topic category occurrence (%) per year

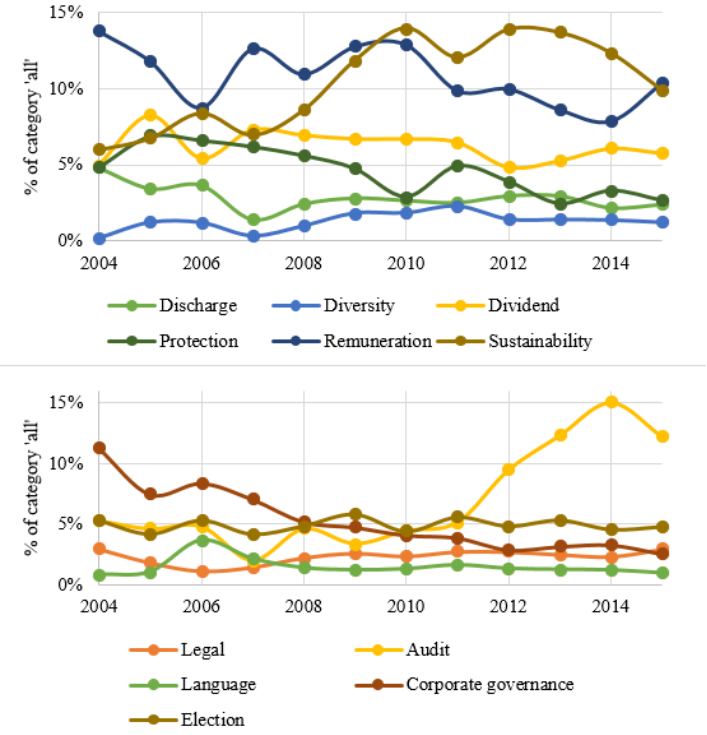

Figure 1 shows that protection mechanisms are nowadays less often discussed in AGMs than in the past. This reflects Dutch corporate practice: less Dutch companies nowadays make use of for instance depository receipts (see Van den Berg, 2015; *cf. supra,* chapter 2, section 5.1.2). Remuneration is considered an important topic in all years. Figure 1 also shows that sustainability has become a more important topic recently. The same holds for matters that concern the external auditor: for this topic, category we observe a sharp increase between 2012 and 2014. One may note that there was a heavier focus on the external auditor at the European level, which resulted in the new Audit Directive (Directive 2014/56/EU) in 2014. In 2011 the EC first developed a proposal for this Directive (EC, 2011b)[469], and in its Impact Assessment already considered audit firm rotation mandatory (EC, 2011c)[470], which may (at least partly) explain the large increase in figure 1. Also diversity has been discussed (slightly) more often over the years: this topic has received significant attention only from not the media, but also from legislators and scholars in different fields.[471]

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469 EC (2011b) Proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts. *COM (2011) 778 final.* 30 November 2011.

470 EC (2011c) Impact Assessment. Commission staff working paper impact assessment accompanying the document proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and a proposal for a regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities. *SEC (2011) 1384 final.* 30 November 2011.

471 For the regulatory initiative on the European level one may refer to the proposal of the EC for a Directive (EC (2012b) Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related

We also look at the development of topic categories over the years for private investors. The percentages are calculated as follows: the case occurrence of a certain topic category for private investors per year, divided by the case occurrence of the topic category 'all' for private investors per year, multiplied by 100%. The case occurrence for the topic category 'all' is 4,201 (*cf. supra*, table 4).

FIGURE 2

Topic category occurrence (%) per year for private investors

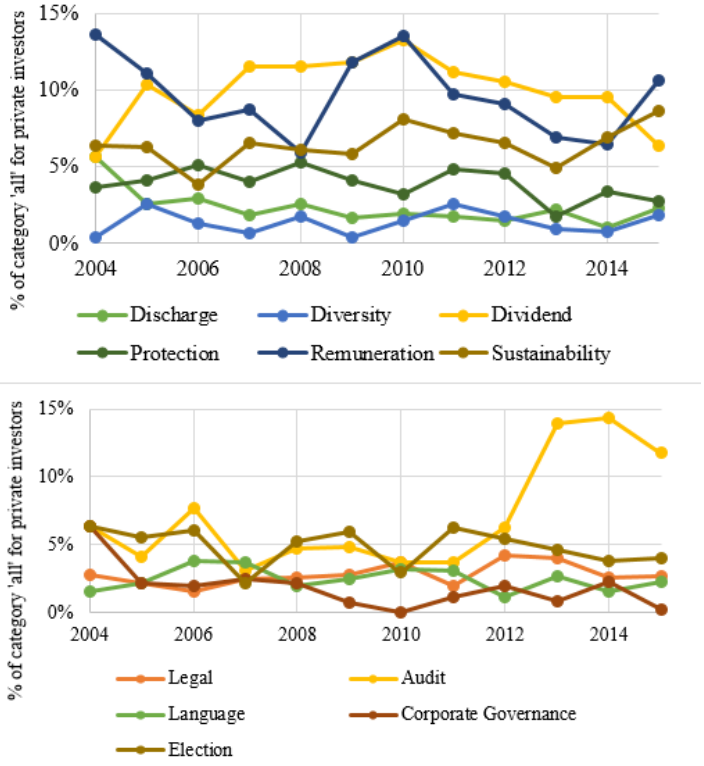

Figure 2 illustrates the following: first we note that, as also shown in table 5, dividends are more often discussed by private investors. Remuneration matters are often discussed, with a clear peak in 2004 and 2010. In contrast to figure 1, figure 2 shows that private investors did not become (much) more interested in sustainability over the years. Note that figure 1 also includes the VBDO, a shareholder representative that largely focuses on sustainability (*cf. supra*, table 4). The external auditor has also become significantly more important to private investors in the years 2012-2014.

The findings in tables 4 and 5 and figures 1 and 2 show that the content of the questions and remarks from the private investor subsample do not substantially differ from the entire sample, which indicates that this type of shareholder indeed uses its forum rights generally in the same way as the other types of shareholders.

In the next section we conduct econometric analyses in order to evaluate what factors drive the use of shareholder forum rights.

measures. *COM (2012) 614 final.* 14 November 2012). And for an example of a financial study, one may refer to McKinsey (2007).

4. CAUSAL INTERFERENCE

In this part of our study we evaluate the connection between the use of the shareholder's forum rights (i.e., questions and remarks), and the factors that we investigated in chapter 3 (*cf. supra*, chapter 3, table 4-6 for the analyses). We investigate whether the number of questions and the number of shareholders that actively participate is related to the importance of the meeting, ownership concentration and voting power and the presence of a large corporate insider. For this we conduct regression analyses with the dependent variable 'question' (i.e., the total amount of questions and remarks during a certain AGM), 'speaker' (i.e., the number of shareholders that made use of their forum rights during a particular AGM), 'PrivateQuestion' (i.e., the total number of questions and remarks during a particular AGM by private investors), and 'PrivateSpeaker' (i.e., the number of private investors that made use of their forum rights during a particular AGM). We are not aware of any prior research on the determinants of the use of shareholder forum rights.

4.1. Hypotheses and Variables

We investigate which factors may contribute to the use of shareholder forum rights in Dutch AGMs. For this we use the factors that we also considered in the third chapter. With respect to the importance of the meeting variables, we expect that shareholders have larger incentives to ask questions or engage in discussions when they consider the meeting to be more important. Hence, we expect that:

Hypothesis 1: the importance of the meeting contributes to the use of forum rights by all shareholders and by the separate category of private investors.

In chapter 3 we saw that the remuneration report, director elections, and discharging directors affect attendance rates. Since in the Netherlands it is common practice to discharge directors, and shareholders do not generally have a vote on the remuneration report, we consider the following variables related to the importance of the meeting in this chapter: 'Elections', i.e., the number of board members (management and supervisory board members) that are up for (re-)election; 'Remuneration', i.e., a dummy variable that has a value of 1 if there is an item on the agenda related to the remuneration of board members (management and supervisory board members) and zero otherwise, and 'Dissent', which is the highest percentage of votes against in a particular AGM (*cf. infra*, table 5 for an overview of the variables).

For the other variables in our models our expectations are less clear. On the one hand, we expect ownership concentration to increase the use of forum rights as these shareholders have larger incentives to monitor the corporate board. On the other hand, we expect the use of forum rights in the AGM to decrease, as blockholders generally can engage in private meetings, and small shareholders have fewer incentives to attend the AGM (*cf. supra*, results of chapter three). We expect that the same holds in those cases where the largest shareholder is a corporate insider. We summarize these considerations in the following hypothesis:

Hypothesis 2: ownership concentration and the presence of corporate insiders positively/negatively affects the use of forum rights by all shareholders.

We have seen in chapter three that small shareholders tend to free-ride more on larger corporate insiders. We therefore expect the use private investor forum rights to be negatively affected by the presence of larger corporate insiders (hypothesis 3):

Hypothesis 3: larger influence by corporate insiders negatively affects the use of forum rights by the separate category of private investors.

Lastly, we expect small shareholder voting power to positively contribute to the use of forum rights. In chapter 3 we have seen that small shareholder voting power positively contributes to (small) shareholder turnout rates. Accordingly, we expect that, when shareholders are more eager to incur the turnout costs, they are probably also more eager to exercise their forum rights. We therefore expect that:

Hypothesis 4: small shareholder voting power positively contributes to the use of forum rights by all shareholders and to the separate category of private investors.

Table 6 provides an overview of the variables that are considered in this part of the research. We also include the control variables from the third chapter in our analyses. [472]

[472] We do not focus on turnout rates in this chapter, as these rates have little in common with the number of shareholders psychically present during the AGM (or represented by a proxy) in practice.

TABLE 6

Overview of the Variables

Variable	Explanation
Dependent variables	
Question	Number of questions and/or remarks in a particular AGM.
Speaker	Number of shareholders that made use of their right to speak (and ask questions).
PrivateQuestion	Number of questions and/or remarks in a particular AGM by a private investor.
PrivateSpeaker	Number of private investors that made use of their right to speak (and ask questions).
Ownership concentration and voting power measures	
BLOCK	This is the concentration ratio for all shareholders with a stake of 5% or more (blockholders), calculated as: $Cr_x = \sum_{i=1}^{x} s_i$, where $s_i \geq 5\%$.
HHI	Calculated as: $H = \sum_{i=1}^{N} s_i^2$, considering the stakes of all blockholders (holding 5% or more of the votes) and where the unknown stake of the small shareholders is ε, which is approximately zero. Displayed in %.
BANZHAFlarge	The Banzhaf index for the largest shareholder, calculated with the program *ipmmle* of Leech. The quorum is set at 51% and all stakes rounded to the nearest integer.
SHAPLEYsmall	The Shapley-Shubik index for a small shareholder holding 1% of the votes, calculated with the program *ssmmle* of Leech.
'Importance of the meeting' variables	
Elections	The number of (supervisory) board members that are elected or re-elected by the AGM.
Dissent	Highest percentage of no-votes at the AGM (excluding shareholder proposals).
Remuneration	Dummy variable for the voting item regarding remuneration of board members (management and supervisory): this variable takes a value of one if a *voting item* regarding the remuneration for management board members and/or supervisory board members is on the agenda. Since shareholders in the Netherlands generally have no say on the remuneration report, this variable is similar to the dSoPother in chapter three of this research.
Type of shareholder variables	
dInsider	Dummy variable for the type of the largest ultimate shareholder: this variable takes a value of one if the largest shareholder is an insider, and zero otherwise.
BANZinsider	This is the interaction variable: BANZHAFlarge * dInsider, which denotes the voting power of the largest shareholder if this shareholder is a corporate insider.
Control variables	
logSIZE	Market value data for the fourth quarter of the year before the AGM took place is retrieved from *Datastream*. The variable is calculated by multiplying the share price by the number of ordinary shares in issue. Note that Datastream only includes ordinary shares in its market value data.
logRI	Total Return Index (TI): this shows a theoretical growth in value in millions of euro of a shareholding over a specified period, assuming that dividends are re-invested to purchase additional units of an equity or unit trust at the closing price applicable on the ex-dividend date.
logPI	Price Index (PI): The price index expresses the share price as a percentage of its value on the base date, adjusted for capital changes

Only in the relationship with the variable 'Dissent' is there the possibility of a (small) reverse causality problem.[473] Thus, the reported effects of this variable should be interpreted with caution.

Table 7 provides descriptive information regarding the dependent and independent variables described in table 6.[474]

TABLE 7

Descriptive information variables

Variable	**# AGMs**	**mean**	**median**	**sd**	**min**	**max**
Question	566	42.1	38	21.3	0	205
Speaker	566	8.3	8	4.1	0	33
PrivateQuestion	566	15.9	13	13.0	0	96
PrivateSpeaker	566	4.8	4	3.3	0	21
BLOCK	566	46.1	45.9	27.0	0	100
HHI (%)	566	1252.2	578.8	1647.1	0	9131.7
BANZHAFlarge	566	0.49	0.31	0.39	0.04	1
SHAPLEYsmall	566	0.06	0.01	0.22	0	1
Elections	566	1.6	1	1.6	0	15
Dissent	552	0.5	0	0.5	0	87.2
Remuneration	566	0.5	0	0.5	0	1
dInsider	566	0.4	0	0.5	0	1
BANZinsider	566	0.3	0	0.4	0	1
logSIZE	559	2.7	2.7	0.9	-0.1	4.8
logRI	560	2.3	2.3	0.7	-0.7	3.8
logPI	517	2.7	2.8	0.9	-0.8	4.5

We first present the Pearson correlations between the dependent and independent variables in table 8. The importance of the meeting variables (i.e., 'Dissent', 'Elections' and 'Remuneration') show positive correlations with the dependent variables. The variable logSIZE also exhibits a positive correlation with the dependent variables. The correlation with 'Speaker' is especially large with 0.43. The Shapley-Shubik value for small shareholders also correlates positively with the dependent variables: this effect is somewhat larger for the dependent variables that concern private investors, which may confirm our fourth hypothesis. The variable BLOCK, which denotes the aggregate stake of all blockholders holding a 5% stake or more, shows a negative correlation with all dependent variables, but the Banzhaf index for the largest shareholder in turn shows a positive correlation (but, this correlation is only statistically significant for the dependent variable 'PrivateQuestion').[475] Lastly, the correlations between the dependent variables and the variable 'logSIZE' are the strongest: table 8 shows positive correlations between 0.17 and 0.43 that are all statistically significant at the 0.1% level.

[473] Only the variable 'Dissent' may create causal problems, since our dependent variables may affect shareholder dissent rates as well (reverse causation). However, one should consider that generally, a large part of shareholders appoints proxy holders or remotely exercises its voting rights. In these cases, the causal problems are likely to be minor. Nevertheless, one should consider the results with some caution.

[474] Table A.3 in the appendix provides a descriptive overview of the companies sorted by the amount of years they are available in the sample (unbalanced sample characteristics).

[475] Following the correlations displayed in table 8, we include the concentration variable BLOCK instead of the variable HHI in the remaining analyses of this chapter.

TABLE 8

Pearson correlations with significance level

	Question	Speaker	PrivateQuestion	PrivateSpeaker
HHI	-0.0422	-0.0641	0.0258	-0.0238
BLOCK	-0.1004*	-0.1736***	-0.0842*	-0.1626***
BANZHAFlarge	0.0239	0.0339	0.1022**	0.0631
SHAPLEYsmall	0.0939*	0.0950*	0.1270**	0.1203**
Dissent	0.1055*	0.1670***	0.0277	0.0788†
Election	0.1821***	0.3036***	0.1845***	0.2554***
Remuneration	0.1112**	0.1485***	0.0915*	0.1373**
dInsider	0.1069*	0.0218	0.0297	-0.0003
BANZinsider	0.0663	0.0223	0.0385	0.011
logSIZE	0.2489***	0.4281***	0.1659***	0.3319***
logPI	-0.0158	0.1951***	0.0022	0.1467***
logRI	-0.0121	0.1905***	0.0292	0.1587***

†p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001.

4.2. Poisson Models

As we have seen in the previous sections, our dependent variables consist of count data (i.e., only non-negative integers). A basic model for these kinds of data is the Poisson distribution with a probability mass function: $Pr(Y = y) = \frac{e^{-\lambda}\lambda^{y}}{y!}$ for $\lambda > 0$, y = 0, 1, 2, etc. The mean and the variance of this distribution are assumed to be $E(Y) = var(Y) = \lambda$, which signals that the mean is assumed to be equal to the variance. However, when we look at our data, we see that we have overdispersion (table 9):

TABLE 9

Descriptive statistics dependent variables

Variable	Range	Mean	Variance
Question	[0,205]	42.1	451.9
Speaker	[0,33]	8.3	17.1
PrivateQuestion	[0,96]	15.9	168.2
PrivateSpeaker	[0,21]	4.8	11.2

As table 9 shows, the variance is around ten times as large as the mean for the dependent variables 'Question' and 'PrivateQuestion'; in these cases, we have overdispersed count data and the Poisson distribution may not be a reasonable model to use. However, when we take a closer look at the relationship between the (log of) the variance and the mean of each dependent variable, we find that there is a proportional relationship (appendix to this chapter, section A.3.). Accordingly, we report the results of the Poisson models in this chapter, and as an additional robustness check, we share the results of the negative binomial models in the appendix to this chapter (appendix, section A.4, see also Cameron and Trivedi, 2009).

Table 10 shows the Poisson distribution panel data models for 'Question'. Models 1-3 are random effects models, models 4-6 are fixed effects models and model 7 is a population averaged model. We conduct a likelihood-ratio test to consider whether the complete models are 'better'

than the reduced models. For models 1 and 2 we cannot reject our null hypothesis, and hence, we cannot conclude that the second model outperforms the first model.[476] In contrast, for the fixed effects models we conclude that the reduced models outperform the complete model (likelihood ratio tests rejects the null at a 5% significance level). Table 10 shows that the robust and bootstrap standard errors are larger than the normal standard errors in all models. When we conduct the Hausman test for the complete and reduced models, the null hypothesis that the unobserved individual characteristics and the explanatory variables are uncorrelated is not rejected in all tests (*cf. supra,* for a description of the Hausman test see chapter 3, section 6), we can use the random effects models. However, one may note that the random effects and the fixed effects models are rather similar. Model 7 displays the average effects for the population (instead of the individual specific effects).

The estimators reported in table 10 generally confirm our hypothesis that the importance of the meeting contributes to the number of questions and remarks. The variable dissent is statistically significant at the 10% level in the third model (random effects model with bootstrap standard errors). The same holds for the dummy variable that denotes whether a say-on-pay resolution is on the meeting's agenda. The coefficients of a Poisson model do not have a simple linear interpretation. The exponentiated Dissent coefficient from model 1 can be used to calculate the effect of an increase on the dissent rate with one unit: [exp(0.0016) -1]*100% = 0.16% increase. Hence, if the dissent increases by one unit, then the percentage change in the number of questions and remarks is only 0.16%. This effect is rather small, but we can conclude that our results indeed confirm our first hypothesis. Similarly, when the largest ultimate shareholder is an insider, the number of questions is [exp(0.220)-1)]*100% = 24.61% higher. Hence, the variable 'dInsider', which takes a value of 1 if the largest shareholder is a corporate insider, also has a positive effect on the number of questions. We cannot find a similar effect for the ownership concentration variable 'BLOCK': the same holds for the Banzhaf index for the largest shareholder. However, when we consider the interaction variable BANZinsider, which multiplies the 'dInsider' variable by the Banzhaf index for the largest shareholder, we can see a negative effect that is statistically significant at least at the 5% level. It seems that shareholders also free-ride on the monitoring efforts of larger corporate insiders with respect to their forum rights (*cf. supra*, chapter 3 confirms this also for the turnout decision). In the next section (4.3) of this chapter we evaluate whether this also holds for the sub-category of private investors, in accordance with our third hypothesis.

The Shapley-Shubik index for a hypothetical small shareholder that holds 1% of the voting rights probably also has a positive effect on the number of questions and remarks, which generally confirms our fourth hypothesis as well, although this variable is not statistically significant in model three.

Lastly, the size of the company, measured as its market capitalization, has a positive statistically significant effect in almost all models. This may be straightforward: the larger the company, the larger the potential number of shareholders that ask questions, probably.

[476] The log likelihood for model 1 is lnll1=-2893.6 and the log likehood for model 2 is lnll2=-2896.65. The likelihood-ratio test provides us with: 2(lnll1 – lnll2) = 6. We compare this with the chi-square value with three degrees of freedom.

TABLE 10

Poisson panel data models for dependent variable 'Question'

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Random effects	*Random effects*	*Random effects[a] (bootstrap standard errors)*	*Fixed effects*	*Fixed effects*	*Fixed effects (robust standard errors)*	*Population averaged (robust standard errors)*
Dependent variable	Question	Question	Question	Question	Question	Question	Question
BLOCK	0.00106			0.00131†			
	(0.000681)			(0.000722)			
BANZHAFlarge	0.0742			0.0996			
	(0.0688)			(0.0727)			
SHAPLEYsmall	0.150*	0.190***	0.190	0.128†	0.184***	0.184†	0.201*
	(0.0696)	(0.0411)	(0.117)	(0.0725)	(0.0419)	(0.0947)	(0.0893)
Elections	0.00482			0.00519			
	(0.00534)			(0.00542)			
Dissent	0.00161**	0.00157**	0.00157†	0.00153**	0.00150**	0.00150	0.00178†
	(0.000553)	(0.000552)	(0.000940)	(0.000561)	(0.000560)	(0.00104)	(0.00104)
Remuneration	0.0509***	0.0521***	0.0521†	0.0497***	0.0511***	0.0511	0.0559†
	(0.0147)	(0.0147)	(0.0314)	(0.0147)	(0.0147)	(0.0319)	(0.0325)
dInsider	0.220***	0.205***	0.205*	0.212***	0.195***	0.195*	0.223**
	(0.0537)	(0.0519)	(0.104)	(0.0574)	(0.0557)	(0.0928)	(0.0799)
BANZinsider	-0.313***	-0.208***	-0.208*	-0.350***	-0.216***	-0.216*	-0.178†
	(0.0834)	(0.0522)	(0.0977)	(0.0869)	(0.0542)	(0.0872)	(0.0981)
logSIZE	0.113***	0.104***	0.104†	0.0979**	0.0866**	0.0866	0.124*
	(0.0269)	(0.0260)	(0.0603)	(0.0336)	(0.0330)	(0.0988)	(0.0494)
_cons	3.274***	3.366***	3.366***				3.294***
	(0.0925)	(0.0820)	(0.161)				(0.129)
N	546	546	546	541	541	541	546
Log likelihood	-2893.612	-2896.571	-2896.571	-2449.055	-2453.336	-2453.336	

Note: the table illustrates Poisson panel data models. The dependent variable is the number of questions and remarks per observation ('Question'). Models 1-3 are random effects models, models 4-6 are fixed effects models and model 7 is a population averaged model. Bootstrap standard errors are displayed between parentheses for the third model: we ran 50 bootstrap replications. For the sixth and the seventh models we report robust standard errors. All standard errors are reported between parentheses.

†p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001.

[a] The random effects models follow a gamma distribution. One may note that when we use a normal distribution for random effects with robust standard errors in the third model, the significance levels of the effects are the same.

When estimating the Poisson models we find that the dispersion parameter *alpha* is significantly greater than zero for all random effects models, which may indicate overdispersion. Nevertheless, the models that are reported in table A.4 of the appendix exhibit similar results. The importance of the meeting variables ('Remuneration' and 'Dissent') have become statistically significant at the 5 and 1% level in the third model respectively, which confirms our second hypothesis. In contrast, the variable BANZinsider shows less significant results.

Next, we consider the Poisson distribution panel data models for the dependent variable 'Speaker' (reported in table 11). Again, we cannot reject the null hypothesis of the Hausman tests, which indicates that we are able to use the random effects models reported in table 11. The log likelihood ratio tests show that the reduced models do not outperform the complete models, though the estimators in these models are rather similar. Our results show that the variable 'Dissent' has a positive effect on the number of speakers that are present, which is statistically significant at least at the 5% level (confirming our first hypothesis). The coefficients are larger than those displayed in table 10, but still do not show a very large effect. Also 'logSIZE' has a statistically significant positive effect on the number of speakers.

TABLE 11

Poisson panel data models for dependent variable 'Speaker'

	(1)	(2)	(3)	(4)	(5)	(6)
	Random effects	*Random effects[a] (bootstrap standard errors)*	*Random effects[a] (bootstrap standard errors)*	*Fixed effects (robust standard errors)*	*Fixed effects (robust standard errors)*	*Population averaged (robust standard errors)*
Dependent variable	Speaker	Speaker	Speaker	Speaker	Speaker	Speaker
BLOCK	-0.000674	-0.000674		-0.000581		
	(0.00126)	(0.00141)		(0.00144)		
BANZHAFlarge	0.0294	0.0294		0.0255		
	(0.118)	(0.133)		(0.142)		
SHAPLEYsmall	0.0115	0.0115		0.0148		
	(0.129)	(0.160)		(0.149)		
Elections	0.0104	0.0104		0.00573		
	(0.0111)	(0.00932)		(0.00953)		
Dissent	0.00272*	0.00272**	0.00278**	0.00282**	0.00286**	0.00285**
	(0.00117)	(0.00103)	(0.000940)	(0.00105)	(0.00104)	(0.000986)
Remuneration	0.0406	0.0406		0.0351		
	(0.0326)	(0.0279)		(0.0276)		
dInsider	0.0150	0.0150		-0.00707		
	(0.0977)	(0.0997)		(0.125)		
BANZinsider	-0.00863	-0.00863		0.0384		
	(0.154)	(0.152)		(0.163)		
logSIZE	0.175***	0.175***	0.197***	0.138†	0.144†	0.198***
	(0.0387)	(0.0437)	(0.0369)	(0.0809)	(0.0788)	(0.0399)
_cons	1.561***	1.561***	1.526***			1.524***
	(0.135)	(0.152)	(0.110)			(0.112)
N	546	546	546	541	541	546
Log likelihood	-1337.829	-1337.829	-1339.431	-1025.132	-1026.125	

Note: the table displays Poisson panel data models. The dependent variable is the number of speakers that pose questions or have remarks per observation ('Question'). Models 1-3 are random effects models, models 4 and 5 are fixed effects models and model 6 is a population averaged model. Bootstrap standard errors are displayed between parentheses for the third model: the amount of bootstrap replications is 50. For models 4-6 we report robust standard errors. All standard errors are reported between parentheses. The other control variables (logPI and logRI) had no explanatory power in all models.

†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

[a] The random effects models follow a gamma distribution. One may note that when we use a normal distribution for random effects with robust standard errors in the second and third model, the significance levels of the effects are the same.

Next, we examine whether there are dynamic effects involved in the number of speakers that are present at the AGM (*cf. supra*, chapter 3, section 6.3). In table 12 we add the lagged dependent variable to the second and third models (table 11).[477] Table 12 shows that the number of speakers that is present in today's AGM depends on the number of speakers that was present in the previous AGM, but the effect is not very substantial. In other words, the amount of speakers in previous years will matter somewhat to the number of speakers that are at the AGM today. The effect of the variable 'Dissent' is still statistically significant at the 1 or 5% level. However, the variable 'logSIZE' is not statistically significant anymore in the complete model (model 1). Also, the magnitude of logSIZE decreases in these two models. The log likelihood increases substantially when adding these dynamic effects, but the lagged dependent variable suppresses the explanation power of the independent variables (for more information on this matter, one may refer to Achen, 2001; Keele and Kelly, 2005).

[477] There are no dynamic effects in the dependent variable 'Questions' (not reported).

TABLE 12

Dynamic Poisson panel data models for dependent variable 'Speaker'

	(1) *Random effects (bootstrap standard errors)*	(2) *Random effects (bootstrap standard errors)*
Dependent variable	Speaker	Speaker
Initial condition	0.0279***	0.0278**
	(0.00766)	(0.00947)
Lagged dependent variable	0.0203**	0.0206*
	(0.00694)	(0.00986)
BLOCK	-0.00131	
	(0.00132)	
BANZHAFlarge	0.0383	
	(0.102)	
SHAPLEYsmall	0.0106	
	(0.153)	
Elections	0.0101	
	(0.0128)	
Dissent	0.00245**	0.00263*
	(0.000857)	(0.00112)
Remuneration	0.0433	
	(0.0372)	
dInsider	0.0305	
	(0.0913)	
BANZinsider	-0.0254	
	(0.137)	
logSIZE	0.0671	0.0982**
	(0.0379)	(0.0375)
_cons	1.474***	1.386***
	(0.149)	(0.0697)
N	474	474
Log likelihood	-1145.567	-1147.832

Note: the table displays dynamic Poisson random effects panel data models. The dependent variable is 'Speaker'. Bootstrap standard errors are displayed between parentheses: the amount of bootstrap replications is 50. The dynamic models are obtained by adding the initial condition and the lagged dependent variables to the corresponding static models (i.e., the 'Wooldridge solution').
†p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001.

4.3. Private Investors: Censored Distributions

The descriptive statistics in the previous sections suggest that there may be more observations for which the values of the variables PrivateQuestion and PrivateSpeaker are zero relative to the other dependent variables.[478] We note that this is the case for 21 observations. Hence, we choose to use a censored distribution: the random effects Tobit model,[479] which can be denoted as (static model):

[478] One may note that only in the 2010 RotoSmeets AGM were no questions or remarks reported.
[479] The marginal effects in these models can be calculated as follows: $\beta x * P(y_{it} > 0 \mid a_i x_{it})$. Since the percentage censored data is around 4%, the marginal effects ~ the coefficients.

$$y^*_{it} = a_i + x_{it}'\beta + u_{it},$$

where $y_{it} = max(0, y^*_{it})$. The estimators for both the static and dynamic models are reported in table 13.[480] First, we can see that the log likelihood ratios[481] are larger for the reduced models that for the complete models. The high value of the log likelihood ratio test indicates that the second model outperforms the first model. The log likelihood ratio-tests for the other models also provides high values. Next, the values for Rho are substantially lower in the dynamic models, which means that in these models there is less unobserved heterogeneity. In addition, the dynamic effects are statistically significant in all models (at the 0.1% level), which indicates that the dynamic models are the preferred ones. Table 13 shows that the effects of the lagged dependent variables are substantially larger in these models than in the models displayed in table 12.

In the reduced dynamic model for 'PrivateQuestion' we find that market capitalization positively contributes to the number of questions and remarks from private investors. This is also the case in the reduced dynamic model for 'PrivateSpeaker'. We note that the dummy variable for say-on-pay agenda items positively contributes to the number of private investors that pose questions or make remarks in AGMs, but the effect is only statistically significant in the static models. Hence, our results do not confirm or reject our hypotheses. There are some indications that the importance of the meeting contributes to private investors' use of forum rights, but these effects are not statistically significant anymore in the dynamic models. The dynamic effects at least suggest that the number of private speakers in previous years will matter to the number of private speakers that are at the AGM today.[482]

The dynamic effects displayed in table 13 are relatively strong, which may perhaps indicate that a persistent shareholder base of private investors that generally attends the AGM and asks questions exists, but the effects present no direct evidence. In addition, note for example that the explanatory power of the other independent variables in the models decreases (for example, 'logSIZE'). Yet this possible conclusion agrees with our findings during the data gathering: we noted that there are in total approximately 800 different shareholders that ask questions in the entire sample.[483]

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480 Since we still must address count data, in the appendix we use the static and dynamic Poisson models as robustness checks (table A.7). We also estimated the negative binomial models (not reported), and noted that these models show similar effects as the Poisson distribution models.

481 The log likelihood for model 1 is $lnll_1$=-2049.9 and the log likehood for model 2 is $lnll_2$=-2101.627. The likelihood-ratio test provides us with: $2(\text{lnll}_1 - \text{lnll}_2) = 103.5$.

482 However, note that in the Poisson distribution models in table A.7 the dynamic effects for the amount of questions by private investors are not statistically significant.

483 This number includes the shareholder representative organisations such as the VEB, institutional investors and other funds and other types of shareholders. We found that there are on average 4.8 private investors actively asking questions and making remarks at the Dutch AGMs. Since we have a sample of 566 AGMs, if these institutional investors are all different people, we have at least 2,717 different shareholders that asked questions. It is important to note that the number of 800 is an approximation, as for some names we could not completely deduce the identity of private shareholders with common Dutch names such as 'Jansen'.

TABLE 13

Tobit panel data models for dependent variables 'PrivateQuestion' and 'PrivateSpeaker' (static and dynamic)

	(1) *Random effects (bootstrap standard errors)*	(2) *Random effects (bootstrap standard errors)*	(3) *Random effects (bootstrap standard errors)*	(4) *Random effects (bootstrap standard errors)*	(5) *Random effects (bootstrap standard errors)*	(6) *Random effects (bootstrap standard errors)*	(7) *Random effects (bootstrap standard errors)*	(8) *Random effects (bootstrap standard errors)*
Dependent variable	PrivateQuestion	PrivateQuestion	PrivateQuestion	PrivateQuestion	PrivateSpeaker	PrivateSpeaker	PrivateSpeaker	PrivateSpeaker
BLOCK	-0.0559		-0.0317		-0.00425		-0.00846	
	(0.0500)		(0.0380)		(0.0106)		(0.00715)	
BANZHAFlarge	3.495	4.072*	-0.0508	2.721	-0.350		0.194	
	(2.649)	(1.794)	(5.379)	(1.715)	(0.817)		(0.744)	
SHAPLEYsmall	3.082		6.119		1.251		0.503	
	(3.743)		(6.139)		(1.046)		(1.032)	
Elections	0.542		0.442		0.0828		0.0996	
	(0.386)		(0.508)		(0.0918)		(0.0990)	
Dissent	-0.00184		0.00800		0.00427		0.00380	
	(0.0287)		(0.0272)		(0.0101)		(0.00871)	
Remuneration	1.097		0.726		0.382*	0.414†	0.276	0.310
	(0.901)		(0.828)		(0.189)	(0.218)	(0.262)	(0.212)
dInsider	-0.962		0.709		-0.510		0.413	
	(2.320)		(1.998)		(0.896)		(0.632)	
BANZinsider	1.718		2.116		0.996		-0.303	
	(3.362)		(5.720)		(1.119)		(1.106)	
logSIZE	1.125	2.090	0.663	1.556*	0.693**	0.800**	0.273	0.460*
	(1.428)	(1.326)	(0.818)	(0.700)	(0.262)	(0.284)	(0.184)	(0.201)
Initial condition			0.272*	0.258*			0.302***	0.302***
			(0.110)	(0.103)			(0.0749)	(0.0854)
Lagged dependent variable			0.143***	0.155***			0.223***	0.229***
			(0.0409)	(0.0369)			(0.0678)	(0.0604)
_cons	11.60**	7.848*	6.051†	3.280	2.590**	2.265**	1.219†	0.687
	(4.413)	(3.548)	(3.111)	(2.761)	(0.949)	(0.702)	(0.715)	(0.554)
N	546	559	457	466	546	559	457	466
Log likelihood	-2049.910	-2101.627	-1759.904	-1799.385	-1286.001	-1317.046	-1092.271	-1116.883
Rho	0.399	0.404	0.235	0.252	0.471	0.470	0.214	0.221
Censored observations	20	21	17	18	20	21	17	18

Note: the table displays Tobit panel data models. The dependent variable in models 1-4 is 'PrivateQuestion' and in models 5-8 this is 'PrivateSpeaker'. Bootstrap standard errors are displayed between parentheses: the amount of bootstrap replications is 50. The dynamic models are obtained by adding the initial condition and the lagged dependent variables to corresponding static models. The other control variables (logPI and logRI) had no explanatory power in all models.
†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

5. CONCLUSIONS AND DISCUSSION

5.1. Conclusions

The objective of our research in this chapter was to take the first steps in revealing how shareholders exercise their right to ask questions at AGMs in Europe. We asked the question how, and to what extent, shareholders make use of their forum rights in the Netherlands and investigated 566 AGMs of 78 Dutch companies over a period of 12 years. We started with a descriptive analysis and found that shareholders had 42.1 questions and remarks on average. These questions and remarks were asked by 8.3 different shareholders on average. The average number of private investors who pose questions or have remarks in AGMs is around 5, which is more than half of the average number of shareholders asking questions. These private investors ask on average around 16 questions per meeting. Our results show that shareholder forum rights are generally important to private investors, but also to representatives of (smaller) shareholders such as the VEB.

The next step was to evaluate the content of the questions and remarks that shareholders had at AGMs. We designed a categorization framework with 14 topic categories. These categories were: annual report, audit, board elections, capital, corporate governance, discharge, diversity, dividend, language, legal, protection mechanisms, remuneration, strategy, and sustainability. We found that these 14 categories already described 54% of all questions and remarks in our sample. These 14 categories are necessarily incomplete and only include fourteen topics of our choice, which indicates that this percentage only displays the lower limit of relevant questions. These findings show that the AGM forum function of AGMs is definitely relevant. Moreover, when we only consider private investors, we see that almost 47% of their questions and remarks fall into these categories.

We also find that, in line with the findings in the previous chapters, executive remuneration is one of the most discussed topics in AGMs. When we only consider private investors, we even find that this type of shareholders cares almost as much about executive remuneration as about dividends. We note that the content of the questions and remarks (at least, those that fall into the topic categories that we specified) does not substantially differ from the entire shareholder base, and hence, that these shareholders use their forum rights in the same way other types of shareholders use these rights.

In the second part of the research we investigated the factors that contribute to the use of shareholder forum rights. We evaluated whether the 'importance of the meeting' variables positively contribute to the use of these rights (hypothesis 1). For the dependent variables that denote the number of questions and remarks ('Question') and the number of speakers ('Speaker'), we use count data models with Poisson distributions and negative binomial distributions (the latter are reported in the appendix to this chapter). Our results tend to confirm our first hypothesis, i.e., that the importance of the meeting variables contribute to the use of forum rights by shareholders. As expected, the effects from the ownership concentration variable are unclear. The dummy variable that indicates that the largest shareholder is a corporate insider has a positive effect on the number of questions at the AGM. Apparently, shareholders have more incentives to monitor the corporate board (and their fellow shareholders) in these situations. However, when we consider the interaction variable BANZinsider, which multiplies this dummy variable by the Banzhaf index of the largest shareholder, we can observe a negative effect, which supports our findings in chapter

3. It seems that the voting power of small shareholders generally contributes to the use of forum rights, although this variable is not statistically significant in all models, and hence, we can only provide some indications that our fourth hypothesis may hold. For the dependent variable 'Speaker' we found a (rather small) statistically significant effect of the lagged dependent variable in the dynamic models.

We also estimate these models for private investors as a separate shareholder category. For this we used a censored distribution, but also reported the Poisson distribution models in the appendix. We estimated static and dynamic panel data models and found that the dynamic effects are statistically significant in all models for the variable 'PrivateSpeaker'. This result indicates that, combined with descriptive statistics on our sample, there may be a persistent group of private investors that generally attends the AGM in the Netherlands. There are also some indications that there are dynamic effects involved in the number of questions and remarks of private investors at AGMs, but these are not confirmed by the Poisson distribution models. We note that the dummy variable for say-on-pay agenda items positively contributes to the number of private investors that pose questions or make remarks in AGMs, but the effect is only statistically significant in the static models.

5.2. Discussion and Policy Implications

Turnout rates do not inform us about the forum function of AGMs; many shareholders usually make use of voting by proxy, which means that turnout rates are often not related to shareholders' physical attendance rates. To investigate the use of shareholder forum rights we therefore used the meeting documents of Dutch AGMs. Clearly, AGMs cannot function as platforms for dialogues without shareholders to attend them. But, when thousands of (small) shareholders attend and even a fraction are willing to engage in the discussions, shareholder meetings may take days. Not to mention the difficulties of managing such a large event. There is clearly a trade-off: on the one hand, regulators encourage shareholders – especially institutional investors – to actively join AGMs and participate in discussions to enhance the functioning of AGMs. On the other hand, if too many shareholders would join, AGMs cannot function properly. Physical shareholder attendance related to the AGM's functioning may thus be viewed as a concave function. To maintain the proper functioning, German law explicitly offers companies the possibility to empower the chairman of the meeting to limit shareholder speaking rights (section 131(2) AktG, *cf. supra*, chapter 1, section 4.1.4). And, for example in Spain, companies may set a requirement in their articles of association regarding a minimum number of shares to be held to attend the AGM (this minimum may not exceed one thousand shares following recent amendments to the Spanish Companies Act, *La Ley de Sociedades de Capital*[484]). Based on our findings, we argue that there is no need for a similar provision in the Netherlands. It seems that the Dutch AGM functions quite well. Moreover, we found that the forum right is not meaningless, as this research provides strong indications that questions and remarks, including those of private investors, involve relevant topics. However, in line with the findings of De Jong, Mertens and Roosenboom (2003) we find that only few shareholders exercise their right to ask questions or engage in discussions themselves.

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[484] Article 521 *bis* of the Spanish Companies Act. *Ley 31/2014, de 3 de diciembre, por la que se modifica la Ley de Sociedades de Capital para la mejora del gobierno corporativo*.
Available at (<https://www.boe.es/boe/dias/2014/12/04/pdfs/BOE-A-2014-12589.pdf>). (accessed in March 2016).

The second part of our research in this chapter investigated the factors that contribute to the use of forum rights in AGMs, to gain better insight into shareholder behaviour. Our findings provide yet another indication that an introduction of a European shareholder's say on the remuneration report would increase (active) shareholder participation in AGMs. However, it is important to note that the discussion on executive pay is fiery and the media have drawn considerable attention to it (Van der Elst and Lafarre, 2017). We found that the dynamic effects in the number of these actively participating shareholders are substantial and that there is a small persistent group of (private) investors that is generally active at Dutch AGMs. Hence, many shareholders do not make use of their forum rights, but the dynamic effects suggest that if active shareholder participation increases once, it will also positively affect active shareholder participation in the following year.

This study is one of the first to investigate the use of forum rights of shareholders in AGMs. It has made the first steps and opens the door for future research. We recommend further analysis of the factors that contribute to the use of forum rights, and of the content of shareholder questions and remarks. One may consider using a larger sample and including other countries as well in future research for comparative research. With respect to the text mining techniques, we recommend further applying these and investigating the relationships between the topics, including for example the context in which certain keywords are used (i.e., the first several words that are used before and after a keyword).

APPENDIX CHAPTER 6

A.1. Categorization Framework

TABLE A.1

Categorization of topics

Category	Keywords included	
Annual report	jaarverslag	figuur
	pagina	foto
	tabel	plaatje
	bladzijde	annual_report
Audit	accountant*	Ernst_Young
	audit*	EY
	Deloitte	KPMG
	Ernst_&_Young	management_letter
		PricewaterhouseCoopers
		Pwc
Board elections	benoem*	herbenoem*
	curriculum_vitae	opvolg*
	cv	vervang*
	election*	
Capital	kapitaal	aandelenuitgifte
	kapitaal*	voorkeursrecht*
	uitgifte	maatschappelijk_kapitaal
Corporate governance	best_practice	Frijns
	code	governance
	commissie_Peters	tabaksblat
	compliance	transparantie
Discharge	decharge	verantwoord*
	discharge	
Diversity	vrouw*	diversity
	diversiteit	
Dividend	dividend*	stockdividend
	dividendbeleid	stock-dividend
	keuze_dividend	uitbetalingspercentage
	keuzedividend	winstdeling
	keuze-dividend	winstuitkering
	stock_dividend	
Language (of the annual report, presentations)	taal	vertaling
	Nederlands	vertalen
	Engels	moedertaal
Legal	boete	NMa
	claim*	Ondernemingskamer
	competition_law	overtreding
	de_eis	rechtbank
	een_eis	rechter
	Europese_Commissie	rechtsgang
	hof	rechtsvordering
	hoge_raad	sanctie
	justitie	terugvordering

	mededinging*	vordering*
Protection mechanisms	administratiekantoor	prioriteit*
	bescherming*	protection
	certificaat*	STAK
	certificaten	stemrechtbeperking
	certificering	trust_office
	preferente	
Remuneration	basissalaris	performance_indicatoren
	beloning*	performance-indicatoren
	bezoldiging*	prestatie_indicatoren
	bonus*	prestatie-indicatoren
	clawback*	remuneratie*
	kortetermijn-uitkering	remuneration*
	KPI	salaris
	langetermijn-uitkering	STI
	LTI	vergoeding
	pay	vertrekvergoeding
Strategy	acquisitie	kans*
	acquisition	m&a
	activiteit*	markt*
	bedrijfsorganisatie	omzet*
	beleid*	ontwikkeling*
	buitenland	operationeel
	doelstelling*	operationel*
	financiering*	organisatie
	fusie	overgenomen
	geïnvesteerd	overname*
	gevestigd	overnemen
	goodwill	project
	groei*	risico*
	herstructurering*	strategie
	industrie*	strategisch*
	integratie*	strategy
	internationaal	synergie*
	investeer*	uitbreid*
	investeren	vestig*
Sustainability	brandstof*	maatschappelijk*
	CO2	mensenrecht*
	code_of_conduct	milieu*
	csr	mvo
	duurzaam*	people
	duurzame	planet
	energie*	richtlijn*
	energy	sociaal
	ethics	sociale
	fossiel*	sustainability
	green	sustainable
	groen	verantwoord_ondernemen
	grondstof*	verduurzaam*
	ketenbeheer	verduurzamen

* denotes a root form.

TABLE A.2

Tone of voice categorization

Category	**Keywords included**		
Positive	animer*	geprikkeld	passie
	bemoedig*	gerust*	positief
	betover*	goed*	positieve
	bewonder*	gunstig*	stralen*
	blij	hartelijk	tevreden*
	compliment*	inspireer*	trots
	dank*	inspirer*	uitbundig*
	enthousias*	lovend	verbeter*
	fasciner*	onder_de_indruk	verheug*
	feliciteer*	opgebeurd	verras*
	feliciteren	opgelucht	verruk*
	geanimeerd	opgetogen*	versterk*
	gefascineerd	opgewekt	verwonder*
	gefelicteerd	oplucht*	voldaan
	geïnspireerd	optimis*	vooruitgang
	geluk*	opwek*	vriendelijk
	geniet*	overtuigd	vrolijk
	gepassioneerd		
Negative	aarzel*	irriteer	onzeker*
	achteruit*	irriteren	opgelaten
	afbreken*	jammer*	probleem
	afkeer*	klacht	problem*
	afker*	kwaad	razend
	afkeur*	kwalijk	schaam*
	afschuw*	kwell*	schrik*
	afstandelijk*	last	schuld
	afwijz*	mager*	slecht
	angst	moedeloos	spijtig
	bang	moeite	tegenvallen
	bedroef*	negatief	tekort
	bedroev*	negatieve	teleur*
	beschaam*	onaangenaam*	teneergeslagen
	betreuren*	onbehaaglijk*	treurig*
	boos	ongeduld*	triest
	chagrijnig	ongeïnteresseerd	verbijster*
	deerlijk	ongelukkig*	verbouwereerd
	erger	ongemakkelijk*	verlies
	frustrer*	ongerust*	verloren
	furieus	onrust*	verontrust*
	gealarmeerd	ontdaan	verontwaardig*
	geërgerd	ontevreden*	verschrik*
	gefrustreerd	onthutst*	vervelend
	geïrriteerd	ontluisterend	wanhoop
	gekweld	ontmoedig*	wanhopig
	gekwetst*	ontstel*	wantrouw*
	geschrokken	ontstem*	woedend
	haat*	onverschillig*	zonde
	helaas		

* denotes a root form.

A.2. Characteristics of the Unbalanced Panel Data Sample

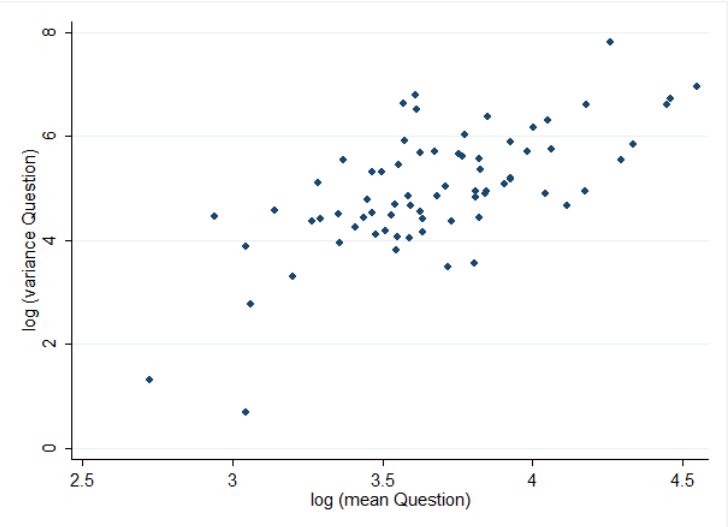
TABLE A.3

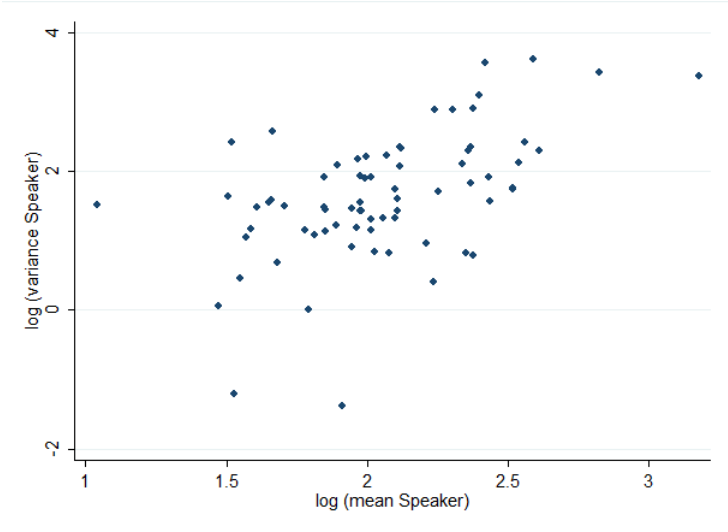
Characteristics per Years in Sample

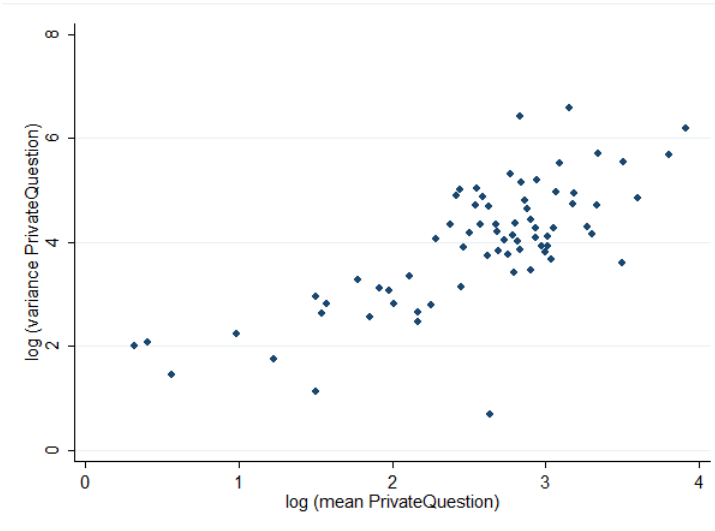
# years in sample	Variables	*N*	*i*	mean	p50	sd	min	max	# years in sample	Variables	*N*	*i*	mean	p50	sd	min	max
1 year	Question	6	6	35.7	40.0	12.4	16.0	47.0	2 years	Question	4	2	32.3	25.5	17.6	20.0	58.0
	Speaker	6	6	8.7	7.5	2.4	7.0	13.0		Speaker	4	2	7.8	7.0	3.8	4.0	13.0
	PrivateQuestion	6	6	14.2	13.0	6.7	5.0	24.0		PrivateQuestion	4	2	17.8	14.0	8.2	13.0	30.0
	PrivateSpeaker	6	6	4.7	5.0	2.4	1.0	8.0		PrivateSpeaker	4	2	5.3	5.0	1.5	4.0	7.0
	BLOCK	6	6	61.4	55.8	18.8	43.3	91.0		BLOCK	4	2	48.4	48.0	22.5	26.8	71.0
	HHI	6	6	2066.8	2078.1	1505.9	417.4	4351.3		HHI	4	2	437.9	426.7	327.5	144.9	753.1
	BANZHAFlarge	6	6	0.7	0.8	0.4	0.2	1.0		BANZHAFlarge	4	2	0.1	0.1	0.1	0.1	0.2
	SHAPLEYsmall	6	6	0.0	0.0	0.0	0.0	0.0		SHAPLEYsmall	4	2	0.0	0.0	0.0	0.0	0.0
	Elections	6	6	2.5	0.0	6.1	0.0	15.0		Elections	4	2	0.8	0.5	1.0	0.0	2.0
	Dissent	6	6	6.4	4.9	6.8	0.0	19.3		Dissent	4	2	1.7	1.6	1.9	0.0	3.4
	dInsider	6	6	0.7	1.0	0.5	0.0	1.0		dInsider	4	2	0.0	0.0	0.0	0.0	0.0
	logSIZE	5	5	3.1	3.1	1.2	1.4	4.4		logSIZE	4	2	2.4	2.3	0.3	2.2	2.9
3 years	Question	3	1	76.3	84.0	18.7	55.0	90.0	4 years	Question	16	4	49.9	42.0	25.5	18.0	97.0
	Speaker	3	1	12.7	11.0	2.9	11.0	16.0		Speaker	16	4	8.5	7.5	4.3	3.0	20.0
	PrivateQuestion	3	1	2.7	2.0	3.1	0.0	6.0		PrivateQuestion	16	4	15.1	10.5	14.7	0.0	52.0
	PrivateSpeaker	3	1	1.7	1.0	2.1	0.0	4.0		PrivateSpeaker	16	4	3.9	3.5	2.9	0.0	12.0
	BLOCK	3	1	1.7	0.0	2.9	0.0	5.0		BLOCK	16	4	41.9	38.0	36.7	0.0	99.7
	HHI	3	1	8.3	0.0	14.4	0.0	25.0		HHI	16	4	1402.5	894.6	2151.3	0.0	6762.2
	BANZHAFlarge	3	1	0.1	0.1	0.0	0.1	0.1		BANZHAFlarge	16	4	0.7	1.0	0.3	0.3	1.0
	SHAPLEYsmall	3	1	0.0	0.0	0.0	0.0	0.0		SHAPLEYsmall	16	4	0.3	0.0	0.5	0.0	1.0
	Elections	3	1	2.7	2.0	1.2	2.0	4.0		Elections	16	4	1.0	0.5	1.2	0.0	4.0
	Dissent	3	1	52.5	60.0	34.3	15.1	82.4		Dissent	16	4	22.2	23.5	17.6	0.0	51.5
	dInsider	3	1	0.0	0.0	0.0	0.0	0.0		dInsider	16	4	0.2	0.0	0.4	0.0	1.0
	logSIZE	3	1	3.8	3.9	0.1	3.7	3.9		logSIZE	16	4	2.3	2.4	1.0	0.6	3.6
5 years	Question	25	5	34.6	38.0	14.0	13.0	58.0	6 years	Question	60	10	49.6	42.5	27.4	15.0	133.0
	Speaker	25	5	8.6	8.0	3.5	4.0	15.0		Speaker	60	10	8.5	8.0	4.4	1.0	28.0
	PrivateQuestion	25	5	16.7	16.0	10.7	0.0	39.0		PrivateQuestion	60	10	20.7	17.0	17.3	0.0	88.0
	PrivateSpeaker	25	5	4.7	5.0	2.9	0.0	12.0		PrivateSpeaker	60	10	5.1	5.0	3.1	0.0	15.0
	BLOCK	25	5	51.4	47.9	25.4	14.5	100.0		BLOCK	60	10	45.5	49.0	28.4	0.0	95.4
	HHI	25	5	2087.6	416.8	2425.8	142.6	5573.5		HHI	60	10	1202.7	686.0	1288.0	0.0	4290.3
	BANZHAFlarge	25	5	0.4	0.1	0.4	0.1	1.0		BANZHAFlarge	60	10	0.4	0.2	0.4	0.1	1.0
	SHAPLEYsmall	25	5	0.0	0.0	0.0	0.0	0.0		SHAPLEYsmall	60	10	0.0	0.0	0.1	0.0	1.0
	Elections	25	5	1.1	1.0	0.8	0.0	2.0		Elections	60	10	1.7	2.0	1.6	0.0	7.0

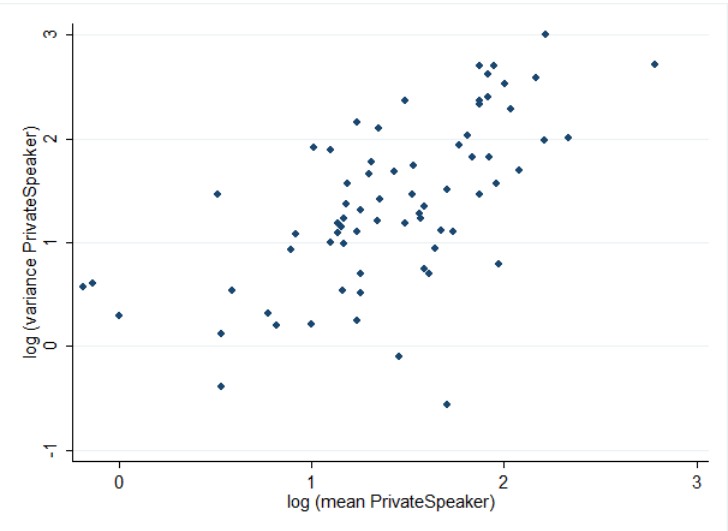
	Dissent	23	5	2.0	0.1	3.6	0.0	11.4		Dissent	57	9.5	13.2	4.5	17.8	0.0	83.4
	dInsider	25	5	0.4	0.0	0.5	0.0	1.0		dInsider	60	10	0.5	0.0	0.5	0.0	1.0
	logSIZE	20	4	1.7	2.0	0.6	0.7	2.3		logSIZE	60	10	2.7	2.8	0.8	1.4	4.1
7 years	Question	56	8	37.0	34.0	17.9	0.0	91.0	8 years	Question	120	15	37.6	34.0	17.6	8.0	102.0
	Speaker	56	8	6.8	6.0	3.5	0.0	16.0		Speaker	120	15	7.8	7.0	3.2	1.0	20.0
	PrivateQuestion	56	8	14.7	12.5	9.3	0.0	46.0		PrivateQuestion	120	15	14.5	12.0	12.6	0.0	75.0
	PrivateSpeaker	56	8	4.4	4.0	3.1	0.0	14.0		PrivateSpeaker	120	15	4.5	4.0	2.9	0.0	15.0
	BLOCK	56	8	55.7	56.8	32.0	0.0	99.8		BLOCK	120	15	47.7	46.2	24.6	0.0	95.9
	HHI	56	8	2528.2	983.8	3035.9	0.0	9131.7		HHI	120	15	1067.7	811.6	1129.5	0.0	5075.8
	BANZHAFlarge	56	8	0.6	0.6	0.4	0.1	1.0		BANZHAFlarge	120	15	0.5	0.4	0.4	0.1	1.0
	SHAPLEYsmall	56	8	0.1	0.0	0.2	0.0	1.0		SHAPLEYsmall	120	15	0.0	0.0	0.2	0.0	1.0
	Elections	56	8	1.4	1.0	1.4	0.0	5.0		Elections	120	15	1.4	1.0	1.2	0.0	5.0
	Dissent	55	7.9	9.0	2.3	13.0	0.0	67.9		Dissent	115	14.4	7.4	1.4	12.5	0.0	65.0
	dInsider	56	8	0.4	0.0	0.5	0.0	1.0		dInsider	120	15	0.2	0.0	0.4	0.0	1.0
	logSIZE	56	8	2.6	2.6	0.8	1.4	4.5		logSIZE	119	14.9	2.8	2.9	0.9	-0.1	4.4
9 years	Question	99	11	44.5	39.0	23.6	11.0	143.0	10 years	Question	50	5	47.6	44.0	29.0	17.0	205.0
	Speaker	99	11	9.3	8.0	5.4	2.0	33.0		Speaker	50	5	7.8	7.0	4.5	2.0	27.0
	PrivateQuestion	99	11	16.8	14.0	13.1	0.0	77.0		PrivateQuestion	50	5	14.5	10.5	16.5	0.0	96.0
	PrivateSpeaker	99	11	5.2	4.0	4.2	0.0	21.0		PrivateSpeaker	50	5	4.0	3.0	3.4	0.0	13.0
	BLOCK	99	11	50.7	53.2	26.5	0.0	98.2		BLOCK	50	5	45.8	47.2	19.0	5.2	73.8
	HHI	99	11	1364.7	841.0	1369.0	0.0	5068.8		HHI	50	5	1217.2	693.0	1402.1	27.0	3995.5
	BANZHAFlarge	99	11	0.6	0.8	0.4	0.1	1.0		BANZHAFlarge	50	5	0.4	0.2	0.3	0.1	1.0
	SHAPLEYsmall	99	11	0.1	0.0	0.3	0.0	1.0		SHAPLEYsmall	50	5	0.0	0.0	0.0	0.0	0.0
	Elections	99	11	1.8	1.0	1.8	0.0	7.0		Elections	50	5	1.7	1.0	1.4	0.0	5.0
	Dissent	98	10.9	9.9	3.7	14.0	0.0	65.7		Dissent	50	5	12.8	4.4	15.6	0.0	55.4
	dInsider	99	11	0.5	1.0	0.5	0.0	1.0		dInsider	50	5	0.8	1.0	0.4	0.0	1.0
	logSIZE	99	11	2.6	2.5	0.9	0.9	4.8		logSIZE	50	5	2.9	2.9	0.3	2.3	3.4
11 years	Question	55	5	37.9	33.0	15.5	18.0	76.0	12 years	Question	72	6	44.3	42.0	13.7	14.0	79.0
	Speaker	55	5	7.6	6.0	3.8	3.0	19.0		Speaker	72	6	9.6	9.0	3.5	2.0	17.0
	PrivateQuestion	55	5	12.3	9.0	11.4	0.0	43.0		PrivateQuestion	72	6	18.4	18.0	9.6	0.0	41.0
	PrivateSpeaker	55	5	4.2	3.0	3.3	0.0	15.0		PrivateSpeaker	72	6	6.0	6.0	3.1	0.0	13.0
	BLOCK	55	5	24.9	22.5	10.0	6.0	45.0		BLOCK	72	6	45.9	48.6	30.0	0.0	100.5
	HHI	55	5	297.8	243.6	257.9	36.2	1223.1		HHI	72	6	913.1	494.2	1101.6	0.0	5578.6
	BANZHAFlarge	55	5	0.2	0.1	0.3	0.1	1.0		BANZHAFlarge	72	6	0.4	0.3	0.4	0.0	1.0
	SHAPLEYsmall	55	5	0.0	0.0	0.0	0.0	0.0		SHAPLEYsmall	72	6	0.1	0.0	0.3	0.0	1.0
	Elections	55	5	1.6	1.0	1.4	0.0	7.0		Elections	72	6	2.0	1.0	1.8	0.0	7.0
	Dissent	55	5	10.6	5.2	12.7	0.0	43.2		Dissent	70	5.8	10.0	4.0	15.0	0.0	87.2
	dInsider	55	5	0.2	0.0	0.4	0.0	1.0		dInsider	72	6	0.4	0.0	0.5	0.0	1.0
	logSIZE	55	5	3.1	3.3	0.6	1.9	4.0		logSIZE	72	6	2.8	2.5	1.1	1.1	4.5

A.3. Dependent Variables









A.4. Other Models

TABLE A.4

Negative binomial models (dependent variable 'Question')

	(1) *Random effects*	(2) *Random effects*	(3) *Random effects (bootstrap standard errors)*	(4) *Fixed effects*	(5) *Fixed effects*	(6) *Fixed effects (robust standard errors)*	(7) *Population averaged (robust standard errors)*
Dependent variable	Question	Question	Question	Question	Question	Question	Question
BLOCK	0.000572			0.00179			
	(0.00127)			(0.00160)			
BANZHAFlarge	-0.129			-0.107			
	(0.126)			(0.167)			
SHAPLEYsmall	0.284*	0.175*	0.175	0.258	0.149	0.149	0.208*
	(0.136)	(0.0844)	(0.103)	(0.168)	(0.0915)	(0.0971)	(0.0959)
Elections	0.00484			0.00752			
	(0.0110)			(0.0121)			
Dissent	0.00248*	0.00249*	0.00249**	0.00252*	0.00245*	0.00245†	0.00189
	(0.00118)	(0.00118)	(0.000939)	(0.00124)	(0.00124)	(0.00136)	(0.00105)
Remuneration	0.0571†	0.0571†	0.0571*	0.0528	0.0532	0.0532†	0.0529
	(0.0326)	(0.0327)	(0.0272)	(0.0332)	(0.0332)	(0.0300)	(0.0328)
dInsider	0.195*	0.221*	0.221**	0.197	0.208†	0.208†	0.240**
	(0.0968)	(0.0926)	(0.0765)	(0.120)	(0.116)	(0.112)	(0.0817)
BANZinsider	-0.0679	-0.174†	-0.174	-0.110	-0.162	-0.162	-0.194*
	(0.157)	(0.101)	(0.0986)	(0.195)	(0.116)	(0.101)	(0.0976)
logSIZE	0.102**	0.102**	0.102**	0.112†	0.107†	0.107	0.119*
	(0.0384)	(0.0353)	(0.0377)	(0.0586)	(0.0568)	(0.0865)	(0.0478)
_cons	1.901***	1.897***	1.897***	1.823***	1.890***	1.890***	3.306***
	(0.150)	(0.127)	(0.186)	(0.204)	(0.180)	(0.270)	(0.124)
N	546	546	546	541	541	541	546
Log likelihood	-2271.951	-2272.595	-2272.595	-1829.270	-1830.072	-1830.072	

Note: the table displays negative binomial panel data models. The dependent variable is the amount of questions and remarks per observation ('Question'). Models 1-3 are random effects models, models 4-6 are fixed effects models and model 7 is a population averaged model. Bootstrap standard errors are displayed between parentheses for the third model: the amount of bootstrap replications is 50. For the sixth and the seventh model we report robust standard errors. All standard errors are reported between parentheses.
†p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001.

TABLE A.5

Negative binomial random effects models (dependent variable 'Speaker')

	(1) *Random effects*	(2) *Random effects (bootstrap standard errors)*	(3) *Random effects (bootstrap standard errors)*	(4) *Fixed effects (bootstrap standard errors)*	(5) *Fixed effects (bootstrap standard errors)*	(6) *Population averaged (robust standard errors)*
Dependent variable	Speaker	Speaker	Speaker	Speaker	Speaker	Speaker
BLOCK	-0.000674	-0.000674		-0.000581		
	(0.00126)	(0.00146)		(0.00182)		
BANZHAFlarge	0.0294	0.0294		0.0255		
	(0.118)	(0.123)		(0.159)		
SHAPLEYsmall	0.0115	0.0115		0.0148		
	(0.129)	(0.123)		(0.214)		
Elections	0.0104	0.0104		0.00573		
	(0.0111)	(0.00921)		(0.0107)		
Dissent	0.00272*	0.00272**	0.00278**	0.00282*	0.00286*	0.00287**
	(0.00117)	(0.000984)	(0.000934)	(0.00113)	(0.00117)	(0.000954)
Remuneration	0.0406	0.0406		0.0351		
	(0.0326)	(0.0297)		(0.0354)		
dInsider	0.0150	0.0150		-0.00707		
	(0.0977)	(0.117)		(0.106)		
BANZinsider	-0.00863	-0.00863		0.0384		
	(0.154)	(0.196)		(0.182)		
logSIZE	0.175***	0.175***	0.197***	0.138	0.144†	0.199***
	(0.0387)	(0.0348)	(0.0390)	(0.0862)	(0.0771)	(0.0404)
_cons	18.70	18.70***	16.72***	21.51***	18.92***	1.521***
	(.)	(0.864)	(3.582)	(3.013)	(4.698)	(0.114)
N	546	546	546	541	541	546
Log likelihood	-1337.829	-1337.829	-1339.431	-1025.129	-1026.125	

Note: the table displays negative binomial panel data models. The dependent variable is the amount of speakers that pose questions or have remarks per observation ('Question'). Models 1-3 are random effects models, models 4 and 5 are fixed effects models and model 6 is a population averaged model. Bootstrap standard errors are displayed between parentheses for the models 2-5: the amount of bootstrap replications is 50. For the sixth model we report robust standard errors. All standard errors are reported between parentheses.

†p < 0.1, * p < 0.05, ** p < 0.01, *** p < 0.001.

TABLE A.6

Dynamic Negative Binomial Random Effects Models (dependent variable 'Speaker')

	(1) *Random effects (bootstrap standard errors)*	(2) *Random effects (bootstrap standard errors)*
Dependent variable	Speaker	Speaker
Initial condition	0.0279**	0.0278**
	(0.00963)	(0.00907)
Lagged dependent variable	0.0203*	0.0206†
	(0.00870)	(0.0105)
BLOCK	-0.00131	
	(0.00142)	
BANZHAFlarge	0.0383	
	(0.0943)	
SHAPLEYsmall	0.0106	
	(0.129)	
Elections	0.0101	
	(0.0116)	
Dissent	0.00245*	0.00263**
	(0.00101)	(0.00100)
Remuneration	0.0433	
	(0.0325)	
dInsider	0.0305	
	(0.103)	
BANZinsider	-0.0254	
	(0.161)	
logSIZE	0.0671†	0.0982**
	(0.0379)	(0.0375)
_cons	15.77***	16.67***
	(1.957)	(1.721)
N	474	474
Log likelihood	-1145.567	-1147.832

Note: the table displays dynamic negative binomial random effects panel data models. The dependent variable is 'Speaker'. Bootstrap standard errors are displayed between parentheses: the amount of bootstrap replications is 50. The dynamic models are obtained by adding the initial condition and the lagged dependent variables to the corresponding static models (i.e., the 'Wooldridge solution').

†$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

TABLE A.7

Static and Dynamic Poisson Distributions (dependent variables 'PrivateQuestion' and 'PrivateSpeaker')

	(1) *Random effects (bootstrap standard errors)*	(2) *Random effects (bootstrap standard errors)*	(3) *Random effects (bootstrap standard errors)*	(4) *Random effects (bootstrap standard errors)*	(5) *Random effects (bootstrap standard errors)*	(6) *Random effects (bootstrap standard errors)*	(7) *Random effects (bootstrap standard errors)*	(8) *Random effects (bootstrap standard errors)*
Dependent variable	PrivateQuestion	PrivateQuestion	PrivateQuestion	PrivateQuestion	PrivateSpeaker	PrivateSpeaker	PrivateSpeaker	PrivateSpeaker
BLOCK	-0.00496		-0.00406†		-0.00131		-0.00259	
	(0.00262)		(0.00313)		(0.00169)		(0.00188)	
BANZHAFlarge	0.222	0.281*	0.334	0.275†	-0.0354		0.0904	
	(0.246)	(0.116)	(0.460)	(0.141)	(0.188)		(0.174)	
SHAPLEYsmall	0.0962		-0.0250		0.168		0.00713	
	(0.269)		(0.382)		(0.241)		(0.210)	
Elections	0.0259		0.0145		0.0127		0.0142	
	(0.0261)		(0.0229)		(0.0161)		(0.0139)	
Dissent	0.000372		0.000402		0.000829		0.000806	
	(0.00192)		(0.00208)		(0.00158)		(0.00230)	
Remuneration	0.0512		0.0416		0.0721*	0.0751†	0.0642	0.0650
	(0.0627)		(0.0578)		(0.035)	(0.0442)	(0.0462)	(0.0420)
dInsider	-0.212		-0.103		-0.110		0.0495	
	(0.187)		(0.248)		(0.170)		(0.133)	
BANZinsider	0.283		0.0360		0.191		-0.0648	
	(0.278)		(0.484)		(0.255)		(0.236)	
logSIZE	0.120	0.165	0.133	0.157	0.128*	0.154**	0.0395	0.0828†
	(0.129)	(0.103)	(0.123)	(0.112)	(0.0547)	(0.0525)	(0.0443)	(0.0486)
Initial condition			0.0195**	0.0194**			0.0528***	0.0519**
			(0.00603)	(0.00623)			(0.0151)	(0.0180)
Lagged dependent variable			-0.000328	0.000301			0.0288*	0.0297**
			(0.00181)	(0.00148)			(0.0115)	(0.0107)
_cons	2.471***	2.161***	2.055***	1.843***	1.170***	1.074***	0.988***	0.835***
	(0.348)	(0.296)	(0.344)	(0.315)	(0.199)	(0.138)	(0.175)	(0.112)
N	546	559	474	484	546	559	474	484
Log likelihood	-2602.822	-2693.014	-2189.511	-2255.970	-1236.901	-1267.783	-1056.712	-1081.966
Censored observations	20	21	17	18	20	21	17	18

Note: The table displays Poisson random effects panel data models. The dependent variable in models 1-4 is 'PrivateQuestion' and in models 5-8 this is 'PrivateSpeaker'. Bootstrap standard errors are displayed between parentheses: the amount of bootstrap replications is 50. The dynamic models are obtained by adding the initial condition and the lagged dependent variables to corresponding static models. †$p < 0.1$, * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

CHAPTER 7 – CONCLUSIONS AND IMPLICATIONS FOR LAW

1. MAIN FINDINGS

Corporate law *inter alia* aims at mitigating agency problems that exist in the relationship between directors and shareholders and between large and small shareholders. Direct collective shareholder monitoring is presumed to take place at the AGM. As we have seen, the role of AGMs can be generally divided in three functions: the information function, the forum function, and the decision-making function. The AGM is considered one of the main bodies of the corporation, but, despite this important theoretical role its functioning is generally criticized by scholars. Economic theory posits that small shareholders in particular have few incentives to attend the AGM: the marginal effect of the vote of a small shareholder is insignificant, they may choose to free-ride on the monitoring of other (larger) shareholders, and moreover, small shareholders have the opportunity to sell their shares ('exit strategy'). In addition to low attendance rates, scholars highlight the absent relevant dialogue at AGMs and the practice of discussions between large shareholders and corporate boards outside the AGM. Furthermore, management resolutions usually receive large majorities of the votes in AGMs. These problems undermine the practical functioning of AGMs. As we have seen in the introduction of this research, the AGM is considered 'dull' by some, and scholars question whether the AGM has become obsolete and the right to vote worthless. Accordingly, in this concluding chapter we answer the main question of our study, namely: 'To what extent does the AGM of listed companies in Europe fulfil its important theoretical role as presumed in the currently practiced European legal framework, and how and to what extent can this role be enhanced or should it be repositioned?'.

The scope of this research question was further determined with the following subquestions:

- What corporate (decision-making) rights do shareholders have in listed companies in the European Member States and how do these rights compare?
- What are the main characteristics of AGMs in the European Member States in practice?
- Which factors contribute to (small) shareholder attendance?
- Did the introduction of the Shareholder Rights Directive, which aimed at lowering the cost of voting, positively affect (small) shareholder turnout rates in the Netherlands, Belgium and France?
- How do small shareholders determine their decision to attend AGMs in concentrated ownership structures and how can small shareholder coordination problems be solved?
- How and to what extent does the AGM serve as a platform for questions and discussions between shareholders and board members?

From the findings of this research, we argue that the AGM is not obsolete and offers the opportunity for all shareholders to directly monitor the board of directors, retrieve information, pose their questions, and exercise their voting rights. However, our research shows that to increase its relevance, several steps can be taken. Below, we first provide a brief summary of chapters 1-6 and a short answer to our main research question. Afterwards we outline our policy recommendations. However, before we do this, we first want to stress that on the one hand the nature of our hand-collected data offers large scope to analyse an important but under-researched

topic, namely the (small) shareholder turnout decision, but on the other hand, the nature of our analysis has some important limitations, including the available sample sizes and the focus on larger listed companies. It is important to keep this in mind when considering our conclusions and policy recommendations.

Chapter 1

In this research, we explored the characteristics of the AGMs of listed companies in Europe in practice. The preliminary step is to determine the legal framework, which we have established in chapter 1. Hence, the central question was: 'What corporate (decision-making) rights do shareholders have in listed companies in the European Member States and how do these rights compare?'. We investigated these shareholder rights at the European level and for the different Member States in this chapter. We saw that few aspects of AGMs are harmonized at the European level, and thus, large parts of the analysis in that chapter concerned national legislation. In addition, the analysis has shown that there are some significant differences among the seven Member States we investigated, including the content of the voting items. We outlined these differences and developed a framework of 15 resolution categories for our empirical analyses in chapter 2.

Chapter 2

In the second chapter, we evaluated the practical characteristics of AGMs to answer the question 'what are the main characteristics of AGMs in the European Member States in practice?'

We demonstrated that, although large differences in total and small shareholder turnout rates between Member States exist, there is an overall increase in these turnout rates in the 2010-2014 period. As we have discussed in our discussion section of the second chapter (*cf. supra*, chapter 2, section 10.2), this finding is not in line with economic theory that suggests that hardly any small shareholder will vote in practice. However, it can be the case that shareholders choose to vote regardless of whether they can affect the voting outcome or whether other shareholders can benefit from their monitoring efforts. At first sight, this may be considered irrational behaviour, but, as we have argued, there can be several plausible explanations. To see why (small) shareholders decide to attend, we examined the factors that may contribute to attendance rates in chapters 3 and 4.

We found that ownership structures in continental European countries, especially in Austria and Belgium, are also more concentrated, especially in comparison to the UK. We have found that small shareholders have less voting power in the continental European Member States as well. These findings confirm the presumed *stylized fact* that ownership concentration is higher in continental Europe.

We also considered shareholder voting behaviour. Although only a small fraction of the voting items did not pass at the AGMs in our sample, we found that some resolution categories received higher dissent rates than others. These categories include director (re-)elections and say-on-pay resolutions. Once we only considered the outsider shareholders, we saw even higher dissent rates, and resolutions were dismissed more often. These results indicate that outsider shareholders do not blindly follow the proposals of the corporate board. Moreover, important questions can be asked following these results, including whether a large insider shareholder should be excluded from voting in certain corporate decisions, or, perhaps whether companies should pay more attention to outsider shareholder opinions. From these findings, together with the increasing trends in turnout rates, we conclude that the AGM is not irrelevant. Nevertheless, we recognize that its theoretical functioning suffers from impediments and that improvements can be made.

Chapter 3

Van der Elst (2012) affirms the need for an 'in depth analysis of the needs and requirements of shareholders to participate in the decision-making process of the company' (2012, p. 64). Our research focuses on this need. In third and fourth chapter of this research we empirically examined the factors that may contribute to (small) shareholder attendance in AGMs, by using Aldrich's theory on political elections as a theoretical framework. Aldrich addresses the problems of voting in political elections – that correspond to the shareholder absenteeism problems in the corporate governance context – and argues that turnout is a 'low-cost low-benefit action'. This thinking implies that small changes in costs and benefits affect the decision to vote of many; it is a decision made 'at the margin'.

As stated above, in chapter 3 we considered the factors that contribute to (small) shareholder voting at AGMs, thereby focusing on the benefits of the voting decision (subquestion: 'which factors contribute to (small) shareholder attendance?'). These factors are: i) ownership concentration measures, ii) voting power measures, iii) 'the importance of the meeting' measures, iv) type of shareholder measures, and v) several control variables. We found that ownership concentration measures have a positive effect on total shareholder turnout rates, but negatively affect small shareholder turnout rates. And, when small shareholders have more voting power they are more eager to vote. Similarly, when the largest shareholder has more voting power, small shareholders are less likely to attend the AGM. Furthermore, our results showed that shareholders generally consider the meeting agenda: for instance, when a resolution concerning the remuneration report is on the agenda, (small) shareholder turnout will be higher. The number of director (re-)elections also contributes to (small) shareholder turnout. In addition, we found that small shareholders tend to free-ride on large institutional shareholders and corporate insiders, but that the magnitude of this free-rider problem with larger institutional investors is smaller. Small shareholders likely consider their votes to be worth less with large corporate insiders. In line with the conclusions from chapter 2, focusing on the opinion of outsider shareholders – for example by introducing a separate vote for these shareholders on certain matters – can increase the benefits for these shareholders when ownership is more concentrated, which will increase their turnout rates.

Our results show that – at least certain features of the AGM – are not meaningless to small shareholders, which contributes to our argument that the AGM is not obsolete. To increase the relevance of AGMs, policy makers can focus these findings. Increasing the benefits of voting for small shareholders, especially in more concentrated ownership structures, will increase turnout rates. In this regard, the introduction of a European say on pay that includes approval of the remuneration report would be recommended.

Chapter 4

In chapter 4 we evaluated the effects of decreasing the costs of shareholder voting on attendance rates of (small) shareholders. The subquestion that we formulated for this chapter was: 'Did the introduction of the Shareholder Rights Directive, which aimed at lowering the cost of voting, positively affect (small) shareholder turnout rates in the Netherlands, Belgium and France?'. This Directive – *inter alia* – aimed to lower the costs of (cross-border) voting. In a d-i-d framework we were able to investigate the effects of its implementation on turnout rates in Belgium, France and the Netherlands. We found a positive treatment effect on total and small shareholder turnout rates

in all countries. The analysis for Belgium also confirmed that the introduction of a shareholder vote on the remuneration report had positively contributed to turnout rates, which again shows that say on pay increases the relevance of AGMs to (small) shareholders. The findings of this research suggest that the proposed revision of the Shareholder Rights Directive is indeed desirable. However, one should consider that, although voting costs may be very low, they are never zero. This implies that turnout rates may, in general, never be (close to) 100% in practice.

Chapter 5

In chapter 5 we considered the small shareholder turnout decision in a simple analytical model to provide an answer to the fifth subquestion: 'How do small shareholders determine their decision to attend AGMs in concentrated ownership structures and how can small shareholder coordination problems be solved?'.

In the previous chapters, we used the classical voting power indices to consider shareholder voting power. These indices contributed to our empirical models as they consider not only the ownership stake of an individual shareholder, but also the entire ownership structure. However, when we took a closer look at the mechanisms behind small shareholder voting, these classical voting power indices seemed to fall short. Consequently, we considered shareholder coordination problems; since small shareholders in particular can free-ride on other shareholders' monitoring decisions, few small shareholders will exercise their voting rights during AGMs. Thus, large shareholders without a *de jure* controlling stake may become controlling blockholders in practice. We investigated the features of small shareholder voting where it is optimal for small shareholders to defeat a blockholder's resolution. The Pareto efficient equilibrium is reached when the willingness-to-vote in the shareholder base is sufficiently high, and thus the opportunistic blockholder's resolution will be defeated. For the situations where small shareholders are not able to coordinate we propose regulatory solutions. Regulation that facilitates communication between small (active) shareholders is likely to enhance the ability of small shareholders to defeat an opportunistic blockholder and thus reach the optimal outcome. Online shareholder communication platforms, either at the company level like the '*club des actionnaires*' in France, or at the national level, like the '*Aktionärsforum*' in Germany, may be stimulated. Another option is to focus on voting thresholds, since the introduction of lower thresholds such as UK corporate governance Rule E.2.2 or the Australian two-strikes rule, may also alter the incentives of small shareholders.

Chapter 6

In the previous empirical chapters our focus was shareholder attendance and decision-making rights. However, as discussed in the introduction and in chapter 1 of this research, the role of AGMs can be divided in three functions. Accordingly, in chapter 6, we discussed the forum function of the AGM. Our question here was: 'How and to what extent does the AGM serve as a platform for questions and discussions between shareholders and board members?'.

We focused our research in this chapter on the AGM minutes of a larger sample of listed companies in the Netherlands. We found that private investors and representatives of (smaller) shareholders such as the VEB make use of their forum rights in particular. In contrast to German law, Dutch law does not explicitly grant the possibility to limit shareholder speaking rights. However, based on our findings, we argue that there is no need for such a provision: we note that the Dutch AGM functions quite well in this respect. Moreover, we found that the forum right is

relevant, as this research provides strong indications that most the questions and remarks, including those of private investors, involve relevant topics. Our categorization analysis, which was necessarily incomplete, determined that at least 54% of the questions that are asked during AGMs are relevant.

We also investigated the determinants of the use of forum rights by shareholders in Dutch AGMs. We found that the importance of the meeting generally contributes to the use of these rights. One of these variables contains shareholder say-on-pay resolutions, which provides yet another indication that an introduction of a European shareholder's say on pay would increase (active) shareholder participation in AGMs. With respect to the number of shareholders (private investors) that actively participate in Dutch AGMs we conclude that there is state dependency involved: it seems that there is a rather active part of the private investor base in the Netherlands that generally attends these meetings.

Brief Answer to the Research Question

A brief answer to our research question is provided. We found that although economic theory suggests that especially small shareholders have no incentives to exercise their voting rights, in practice, a substantial part of these small shareholders actually participate in AGMs. In addition, not only the voting right is not irrelevant to many small shareholders, also the forum right is not meaningless. Small shareholders ask relevant questions in most cases, and there are some dynamic effects involved in active shareholder participation. Nonetheless, small shareholder turnout and active participation in AGMs can still be improved and our research has shown several possibilities for doing this. Besides, in concentrated ownership structures with an opportunistic blockholder that can exercise *de facto* control, small shareholders can use enhanced coordination mechanisms. Based on our findings, we do not argue that the role of the AGM should be repositioned, but we see room to enhance the AGM's role. In the next section we summarize our policy recommendations.

2. POLICY RECOMMENDATIONS

Our research has shown that the AGM is not dull ritual at all, but problems are definitely present, especially when ownership is concentrated. Policy initiatives should be considered to enhance the functioning of AGMs. We investigated which shareholder rights would increase the relevance of the AGM, whether a reduction in costs would matter and how shareholder coordination problems may be solved. Our recommendations are outlined below.

Enhancing Shareholder Rights

To increase the relevance of AGMs, we recommend adopting a European say on pay that provides shareholders in all European countries with a vote on the remuneration report. An advisory say on the remuneration report is already included in the adopted amendments of the Shareholder Rights Directive (March 2017), and our findings suggest that this new European shareholder right enhances turnout rates in several Member States.

Next, based on our findings, we recommend adopting a rule like the UK Listing Rules 9.2.2AR jo 9.2.2ER in the other European Member States. This rule provides a separate vote on the election of independent directors in companies with controlling shareholders (threshold is 30%). In chapter 2 we saw that outsider shareholder dissent in director elections is larger than total shareholder

dissent for these resolutions, and that director elections positively contribute to small shareholder attendance rates. Moreover, ownership concentration is higher in continental European countries and has a negative impact on small shareholder turnout. These findings suggest that such a rule may fit the needs of continental European Member States. The rule can be extended to other control rights as well, for example to say-on-pay resolutions. In chapter 2 we found that say-on-pay dissent rates are substantially higher when only considering outsider shareholders. If a vote on the remuneration report contributes to the relevance of AGMs for small shareholders, we would suggest to consider the adoption of a separate (advisory) vote for outsider shareholders on the remuneration report. However, it is important to note that there has not been an extensive evaluation of this new UK Listing Rule yet. In addition, it should be noted that disproportionate control on the art of minority shareholders should be avoided. The nature of a say-on-pay resolution is different than that of the election right of independent directors, since the outsider shareholders have a sole interest in the latter, whereas say on pay is relevant to all shareholders. This also offers an interesting avenue for future research.

The earlier version of the European say-on-pay rule included that companies need to explain to their shareholders how the voting outcome regarding the remuneration report resolution is taken into account. The adopted version, however, does not contain such a requirement. In contrast, the new UK corporate governance rule, provision E.2.2, goes one step further, by requiring the company to explain what actions it intends to take to understand the reasons behind the vote result. Our finding that small shareholders may view the AGM not only as a venue for decision-making, but also to voice their concerns, contributes to the relevance of such a new rule like provision E.2.2., especially in more concentrated ownership structures. However, since small shareholders in particular are often unknown in large listed companies, we recommend further research to investigate the use of this rule and its practical implications.

To conclude, in the light of our main findings and the discussion above, and awaiting the evaluation of the new UK Listing Rule but also the more radical Australian two-strikes rule, we propose that Member States may consider opting for a separate vote for outsider shareholders on the remuneration report in the national corporate governance codes for those companies with a controlling blockholder with the implementation of a European shareholders' say on the remuneration report. In case outsider shareholder opposition is substantial, companies should, at the very least, explain how the voting outcome is considered in the next remuneration report.

Redundant Shareholder Rights

Whereas certain shareholder rights may be enhanced, we recommend to consider diminishing other rights. As we have seen in our second chapter, the approval of the annual financial statements is just a formality. To increase the efficiency of AGMs and to get rid of formalities, we suggest that Member States provide either the supervisory board or the non-executive board members with the authority to approve the annual financial statements, in line with the current section 173(1) AktG in Germany. If the financial statements no longer require shareholder approval, AGMs will no longer have to occur annually, as is currently required. Such a change would further reduce AGM costs and it may be the first step to abolish the annual requirement for 'AGMs'. One should note that other voting items, including the approval of the remuneration report and, as a best practice in the UKCGC, the re-election of directors, also require an annually vote. Another problem may be that removing the annual character of the AGM may limit the yearly opportunity for shareholders, and small ones in particular, to ask questions about the company's matters. One

possible solution would be using the Q&A section of the company's website to (annually) answer relevant shareholder questions of shareholders (related to the annual report). In addition, one may note that the formulation of the European right to ask questions in article 9 of the Shareholder Rights Directive suggests that dropping the requirement for shareholder approval of financial statements may limit the right to ask questions for shareholders in practice, though this is not the case in the Netherlands and this issue may easily be addressed in other Member States as well. Although we surely do not want to advocate it (yet), we recommend conducting further research on the (practical) desirability of dropping the yearly requirement. We already see a movement towards the use of digital tools including virtual shareholder meetings – although to date the physical meeting is still the main forum in a significant majority of (European) countries – which offers scope for more innovative approaches to the rather 'classical' AGM. Nonetheless, again we would like to stress that our research has shown that the position of this long-established format is not obsolete.

In line with the aforementioned efficiency argument to dispose of formalities, we suggest that legally mandated amendments that do not offer any room for discretion to the corporate board, should not require shareholder approval as well. In our analysis, we saw that voting items regarding the amendments to articles of association generally have a negative impact on (small) shareholder turnout in the UK, which at first sight contradicts Bebchuk's assertion (2005) that this shareholder right should be enhanced. To be fair, we did not consider the content of these amendments in our analyses. We strongly recommend conducting more extensive research on this voting category in future.

Reducing Turnout Costs

We strongly recommend introducing further rules that reduce (small) shareholder turnout costs. In this respect, we are in favour of the adopted amendments to the Shareholder Rights Directive. As we have seen, these amendments may further reduce the costs of using a chain of intermediaries in (cross-border) voting (Zetzsche, 2008; Davies et al., 2011). They cover shareholder identification of shareholders (article 3a), transmission of information to shareholders (article 3b) and the facilitation of the exercise of shareholder rights (article 3c). From our research, it follows that lower voting costs lead to higher (small) shareholder turnout rates, and thus contribute to the functioning of AGMs. Moreover, small shareholder coordination problems will diminish as the free-rider incentive becomes less severe when less costs are involved.

Enhancing Shareholder Coordination

We also recommend adopting regulatory initiatives that facilitate communication among small (active) shareholders. These initiatives are likely to enhance the ability of small shareholders to defeat an opportunistic blockholder (or an opportunistic management proposal) and thus reach the optimal outcome. Online shareholder communication platforms, either at the company level like the '*club des actionnaires*' in France, or at the national level, like the '*Aktionärsforum'* in Germany, may be stimulated. We investigated the use of these facilities in the context of opportunistic blockholders, but also in cases where small shareholders want to oppose the corporate management. In both cases, these tools foster coordination. However, it should be noted that it can be questioned that the existing examples of shareholder communication platforms are sufficient to foster shareholder coordination, which offers scope for further research on the

particular needs of (small) shareholders regarding these communication platforms to establish their optimal form.

The new Shareholder Rights Directive puts more emphasis on the long-term engagement of institutional investors and asset managers, for instance with the introduction of transparency requirements. These new provisions may reduce small shareholder coordination problems due to the possible increased availability of information. In addition, an introduction of a rule like principle 6 of the UK Steward Ship Code, which requires institutional investors to vote with 'all shares held', in continental European Member States may also reduce shareholder coordination problems substantially.

Another option to enhance small shareholder coordination is to focus on voting thresholds such as qualified majority requirements. We have seen that it is easier for small shareholders to coordinate at a lower threshold. In addition to lowering the threshold in the shareholder voting game, one may also consider adding an additional, lower threshold. The result of reaching this lower threshold may be a lower pay-off for small shareholders (for example, under the UK corporate governance Rule E.2.2 or the Australian two-strikes rule), but such a rule may still stimulate small shareholder voting.

3. THE LEGAL ROLE OF THE SHAREHOLDER

In the introduction we saw that, in general, the legal role of the shareholder is similar in most countries nowadays: shareholders are considered residual claimants, who have the right incentives to be involved in important corporate decision-making. Generally, fundamental decisions and transactions require shareholder approval, but other decisions, including those that involve the corporate strategy, are delegated to the corporate board. Still, shareholders are 'fictional' and their incentives may largely differ. Moreover, as Hopt (2007) notes, 'the line between what is to be decided by the board and what should remain for the shareholders is difficult to draw' (p. 452). And, in a later paper, Davies and Hopt (2013) start with: '[…] identifying the role that the board does in fact discharge in the governance of the large public company and determining to whom it is accountable for the exercise of its powers is in fact far from easy. The role and functioning of the board are matters of continuing debate among policy makers, academics and others; and the rules relating to these matters are never stable' (p. 3). These considerations indicate that shareholder say on executive pay is not a foregone conclusion. Introducing a shareholder say on executive remuneration in Europe would increase the relevance of the AGM. The question of whether such a decision should be left to the shareholders in the first place remains, however. It seems that executive pay is a popular societal subject on which virtually everyone has an opinion. Hence, *outside* the premise that shareholder control of these topics is efficient, we suggest that the European policy maker – and the national one – focus on determining the desirable position of Hopt's line before increasing shareholder control rights. In this respect one may also consider the discussion of the notion of 'a shareholder democracy' in our introduction. In our opinion, shareholder voting should never be an end in itself, but, in the words of Bebchuk (2005), a means to increase effective corporate governance. We strongly recommend policy initiatives that focus on lowering shareholder voting costs and enhance shareholder coordination, no matter how Hopt's line is drawn, as these would directly contribute to more efficient shareholder control.

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